

Garrecht, Denman, Healy
No. 11695 2488

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United States
Circuit Court of Appeals
Filing in Court

For the Ninth Circuit.

CAL-BAY CORPORATION, MARIA FARIA,
JOSEPH FARIA, JR., EDWARD FARIA
and MAE E. ROCHE,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee

Transcript of Record

In Three Volumes

VOLUME I

Pages 1 to 432
PAUL P. O'BRIEN, CLERK

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

No. 11695

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Special Assistant to the Attorney General,
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San Francisco, California.

Attorney for Plaintiff and Appellee.

Jury trial before the Honorable Louis E. Goodman,
District Judge.

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 ACRES OF LAND, more or less, situate in
the County of Contra Costa, State of Cali-
fornia, MAE E. ROCHE, EDWARD FARIA,
MARY FARIA, G. FARIA, et als.,

Defendants.

COMPLAINT IN CONDEMNATION

Comes now the plaintiff, United States of America, by Mitchell Bourquin, Special Assistant to the Attorney General, at the direction and under the authority of the Attorney General of the United States, and pursuant to the request of the Secretary of the Navy of the United States, and for cause of action against the above named defendants alleges as follows: [1*]

I.

That this proceeding is instituted and the lands hereinafter described are taken and condemned pursuant to and under the provisions and authority

* Page numbering appearing at foot of page of original certified Transcript of Record.

of and for the purposes and uses authorized by the Acts of Congress approved March 27, 1942 (Public Law 507, 77th Congress) and June 22, 1944 (Public Law 347, 78th Congress).

II.

That the estate or interest which plaintiff seeks to take and condemn is the fee simple title in and to the lands hereinafter described, subject, however, to existing public utility easements.

III.

That the acquisition of said lands by plaintiff will be of the greatest public benefit and the least private injury; that no part of said lands has heretofore been appropriated for public use by plaintiff, or the State of California, or any political subdivision thereof.

IV.

That there are sufficient funds now available with which plaintiff can and is authorized to pay just compensation for the lands sought to be taken and condemned herein in whatever sum may be ultimately awarded in this proceeding for the taking of said lands, and any damages resulting therefrom.

V.

That plaintiff is informed and believes and therefore alleges that the lands taken by this proceeding are not a part of any larger tract belonging to the apparent or purported owners of said lands. [2]

VI.

That the defendants, First Doe to Fiftieth Doe, inclusive, and First Doe Corporation to Twenty-fifth Doe Corporation, inclusive, are sued and designated herein by fictitious names for the reason that their true names are unknown to plaintiff, but the plaintiff will, upon ascertaining their true names, substitute the same for such fictitious names by appropriate amendment, and prays such leave of the Court; that said defendants, and each of them, may have or claim to have an interest in some piece or parcel of the lands sought to be taken and condemned in this action, but that the nature, character or extent of such interest is unknown to plaintiff.

VII.

That the lands hereinafter described have been selected by the Secretary of the Navy of the United States to be used for the expansion of the United States Naval Magazine, Contra Costa County, California, and are sought to be taken and condemned for said purpose and use and are suitable and necessary therefor. That said use of said lands constitutes a public use and said lands are required for immediate use in order to carry out said purpose.

VIII.

That the land to be taken and condemned in this proceeding is situate in the County of Contra Costa, State of California, and is more particularly described as follows: [3]

Beginning at the point of intersection of the Northerly line of the State Highway (known as Arnold Industrial Highway) running from the Town of Pacheco to the Town of Pittsburg, California, and the Easterly boundary line of the Oakland Antioch & Eastern Railroad right of way (now Sacramento Northern Railroad); running thence Northerly along said Easterly line of said railroad right of way 940 feet, more or less, to the Southeasterly boundary line of the right of way of that certain 22-inch "Standard Pacific Gas Line"; thence Northeasterly along said Southeasterly line of said right of way 4180 feet, more or less, to its intersection with the Southwesterly line of the Contra Costa Canal; thence Southeasterly along said Southwesterly line of said canal 150 feet, more or less, to an angle point therein; thence continuing along said canal line Easterly 370 feet, more or less, to an angle point therein; thence continuing Southeasterly along said Southwesterly line of said canal and parallel with that certain tangent line (and its Southeasterly production) on the center line of said canal between Stations "P.T. 1440+27.74" and "P.C. 1452+99.92," as so designated upon Sheets 80 and 92 of 146 sheets showing "Central Valley Project, Contra Costa Canal System, General Topography," a distance of 2830 feet, more or less, to the Southerly line of said State Highway; thence Easterly and Northeasterly along the Southerly and Southeasterly line of said State Highway 2900 feet, more or less, to a line drawn from a point on the

East and West center line of Section 36, Township 2 North, Range 1 West, Mount Diablo Base and Meridian, distant thereon 1320 feet Easterly from the Westerly line of said Section 36 through a point on the West line of Section 16, in Township 2 North, Range 1 West, Mount Diablo Base and Meridian, distant thereon 1320 feet Northerly from the Southwest corner of said Section 16; thence Southeasterly along the last mentioned line so drawn 24,830 feet, more or less, to said point on said center line of said Section 36; thence Southwesterly 5550 feet, more or less, to an angle point in the Southeasterly boundary line of Rancho Monte Del Diablo lying in the Northeast quarter of Section 2, Township 1 North, Range 1 West, Mount Diablo Base and Meridian; thence Southwesterly along the Southeasterly boundary line of said Rancho 2420 feet, more or less, to the center line of a certain road running Northwest and Southeast from the point where Bailey Road crosses the Bay Point & Clayton Railroad to the Southeasterly boundary line of said Rancho; thence Northwesterly along said center line of said last mentioned road 8450 feet, more or less, to the center line of said Bailey Road; thence Southwesterly along said center line 700 feet, more or less, to the Southwesterly bank of Mt. Diablo Creek; thence Northwesterly along a line drawn at a right angle to said center line of said Bailey Road and crossing that certain 103-acre parcel of land now or formerly owned by Van Heeckeren, a distance of 2000 feet, more or

less, to the Northwesterly boundary line of said 103-acre parcel of land; thence Southwesterly along said 103-acre parcel of land 900 feet, more or less, to the center line of a certain road forming the Northeasterly boundary line of the "Gehringer Subdivision" in Clayton Valley, California; thence Northwesterly along said center line and its Northwesterly production 7900 feet, more or less, to the Southeasterly line of [4] that certain 40-acre parcel of land now or formerly owned by A. J. Diaz; thence Northeasterly along the Southeasterly line of said 40-acre parcel of land 1200 feet, more or less, to the center line of a road running along the Northeasterly boundary line of said 40-acre parcel of land; thence Northwesterly along said center line 2150 feet, more or less, to the center line of Willow Pass Road; thence Southwesterly along said center line 75 feet, more or less, to the Southwesterly boundary line of that certain 162.29-acre parcel of land now or formerly owned by J. C. Noia; thence Northwesterly along the Southwesterly boundary line of said 162.29-acre parcel of land 3290 feet, more or less, to the most Northerly corner of that certain 310.05-acre parcel of land owned by the United States of America; thence Northwesterly continuing along the Southwesterly boundary line of said 162.29-acre parcel of land and along the Southwesterly boundary line of that certain 28.17-acre parcel of land now or formerly owned by E. L. and Opal G. Bayes 1650 feet, more or less, to the Southeasterly corner of that certain 46.86-acre parcel of land now

or formerly owned by Melvern S. Hogan; thence Northeasterly along the Southeasterly line of said 46.86-acre parcel of land 420 feet, more or less, to a fence corner; thence Northwesterly along a fence crossing said 46.86-acre parcel of land 380 feet, more or less, to a fence corner; thence Northeasterly along a fence 260 feet, more or less, to an angle point in said fence; thence Northwesterly along said fence 50 feet, more or less, to a fence corner; thence Northwesterly along said fence 440 feet, more or less, to a fence corner where a fence running Northwest and Southeast intersects a fence running Northeast and Southwest in the approximate center of said 46.86-acre parcel of land; thence Northwesterly 1040 feet, more or less, to the Northwesterly corner of said 46.86-acre parcel of land; thence Northwesterly along the dividing line between that certain 79.20-acre parcel of land now or formerly owned by M. R. Freitas and that certain 112.85-acre parcel of land now or formerly owned by Hugo Carlson, a distance of 830 feet, more or less, to the Easterly boundary line of said Oakland Antioch & Eastern Railroad right of way; thence Northerly along said Easterly boundary line of said railroad right of way 2260 feet, more or less, to the point of beginning.

Containing 5430 acres, more or less. [5]

IX.

That said land may be divided into numbered parcels, the description and apparent and purported owners of which are as follows:

Parcel No.	Owner

3	Ralph D. Bollman

57	Mae E. Roche
58	Edward Faria
59	Mary Faria

64	G. Faria

That the County of Contra Costa may have or claim some interest in the hereinbefore described land, and is therefor joined as a defendant.

That a map showing the lands taken as hereinabove described is attached hereto, marked Exhibit "A" and made a part hereof by reference. [6]

X.

That a state of war now exists between the Plaintiff and certain foreign governments and pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress), the Plaintiff upon the filing of this Complaint, becomes entitled to the right to take immediate possession of the above described property; and that the above mentioned Special Assistant to the Attorney General has been directed by the Attorney General of the United States to take proper proceedings herein to secure from this Honorable Court an Order for immediate possession.

Wherefore, Plaintiff prays:

1. For an Order authorizing the United States to take immediate possession of the above described property;

2. For Judgment;

(a) Decreeing that said property above described, to the extent of the title and interest which plaintiff seeks to acquire by this action, is condemned for necessary public uses of the Plaintiff, as authorized by law; that all of said lands are necessary and suitable thereto;

(b) Determining the value of the property subject of this action, and each separate interest therein, and directing the payment for each separate interest to the persons entitle thereto;

3. For such other and further relief as the Court shall deem meet and proper in the premises.

/e/ M. MITCHELL BOURQUIN,

Special Assistant to the
Attorney General,

Attorney for Plaintiff.

Verification

United States of America,
Northern District of California,
City and County of San Francisco—ss.

M. Mitchell Bourquin, being first duly sworn,
deposes and says:

That he is a Special Assistant to the Attorney

General of the United States and attorney for the plaintiff in the above entitled action; that he has read the foregoing Complaint in Condemnation and knows the contents thereof; that the same is true of his own knowledge except as to matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

That the reason this verification is made by affiant and not by the plaintiff is that the plaintiff is a corporation sovereign.

That the sources of affiant's information and the grounds for his belief are the official communications, records, files and documents received from the Attorney General of the United States and from the Secretary of the Navy of the United States.

/s/ M. MITCHELL BOURQUIN

Subscribed and sworn to before me this 22nd day of July, 1944.

[Seal] LOUIS V. VASQUEZ,

Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires December 4, 1947.

[Here follows Exhibit "A", Map of Lands.]

[Endorsed]: Filed at 3:40 p.m. July 22, 1944.
C. W. Calbreath, Clerk. [8]

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 ACRES OF LAND, more or less, situate in
the County of Contra Costa, State of Cali-
fornia, W. J. VON HECKEREN, et al.,

Defendants.

ORDER FOR IMMEDIATE POSSESSION

It appearing from the Complaint on file herein
that application has been made by Plaintiff to be
granted immediate possession of the lands subject
of this action, and good cause appearing therefor,

It Is Hereby Ordered that the United States of
America be, and it is hereby granted leave to take
immediate possession of said land and property, and
to use said land and property to the extent prayed
for, and for the purposes alleged in said Complaint,
and to proceed thereon with the authorized public
works of the United States;

It Is Further Ordered that the Defendants and
all other persons in possession of said property are
hereby directed to deliver immediate possession
thereof to the United States and its agents, and the
United States Marshal is directed to place and

maintain Plaintiff in possession of said property.

The Court reserves the right to make such other and further orders and decrees as may be necessary in the premises.

And It Further Appearing that Plaintiff has made adequate provision for the payment of just compensation for the taking of said land and property, it shall not be necessary for the Plaintiff to deposit any money or other security for the purpose of securing payment to the parties entitled thereto.

The land and property subject of this order is situate in the County of Contra Costa, State of California, and is more particularly described as follows: [10]

[Attached land description is identical with description set out in Complaint in Condemnation appearing on pages 5 to 8.]

Done in open Court, this 24th day of July, 1944.

A. F. ST. SURE,

Judge, United States District Court, Northern District of California.

[Endorsed]: Filed at 2:30 p.m. July 24, 1944.
C. W. Calbreath, Clerk. [12]

[Title of District Court and Cause.]

PETITION FOR ORDER MODIFYING ORDER
OF IMMEDIATE POSSESSION AS TO
PARCELS 58 AND 59

Come now the plaintiff, United States of America, by M. Mitchell Bourquin, Special Assistant to the Attorney General, and Cal-Bay Corporation, a California corporation, defendant sued herein as First Doe Corporation, and respectfully petition this court as follows:

That whereas said defendant Cal-Bay Corporation was in possession of Parcels 58 and 59 as the same are designated in the Complaint and Order for Immediate Possession on file herein and desire to remain in possession thereof for the purpose of prosecuting its drilling and other operations thereon:

That an order modifying the order for immediate possession made herein on July 24, 1944, be issued out of this court in respect to said defendant and said parcels 58 and 59 whereby said defendant shall be permitted to continue in possession of said parcels and continue its operations thereon [13] until thirty (30) days after service by plaintiff upon said

defendant, or on its attorneys herein, of written notice of the termination of said right to possession.

UNITED STATES OF AMERICA

By /s/ M. MITCHELL BOURQUIN,

Special Assistant to The Attorney General

Attorney for Plaintiff.

FITZGERALD, ABBOTT & BEARDSLEY,

By /s/ CHARLES A. BEARDSLEY,

Attorneys for Defendant.

ORDER MODIFYING ORDER OF IMMEDIATE POSSESSION AS TO PARCELS 58 AND 59

Upon reading the Petition of plaintiff, United States of America, and defendant, Cal-Bay Corporation, and good cause appearing therefor, it is hereby ordered that the Order for Immediate Possession heretofore issued out of this court on July 24, 1944, be and it is hereby amended in respect to said defendant and Parcels 58 and 59 as the same are designated in the Complaint and said Order for Immediate Possession on file herein so that said defendant may continue in possession and may continue its operations on said Parcels 58 and 59 until thirty (30) days after service by plaintiff on said defendant, or on its attorneys herein, of written notice of the termination of said right to possession: that thereupon said defendant shall forthwith vacate

said parcels and shall surrender the same to plaintiff.

Done in open court this 28th day of September, 1944.

/s/ LOUIS E. GOODMAN,
Judge, United States District Court, Northern
District of California.

[Endorsed]: Filed Sept. 28, 1944.

[Title of District Court and Cause.]

NOTICE OF TERMINATION OF RIGHT TO
POSSESSION OF PARCELS 58 AND 59 IN
THIS ACTION

To defendant Cal-Bay Corporation, a corporation,
and to Messrs. Fitzgerald, Abbott & Beardsley,
its Attorneys:

You and each of you will please take notice as follows: That pursuant to the Order of Court modifying Order for Immediate Possession as to Parcels 58 and 59 in this action, dated September 28, 1944, your right to possession of Parcels 58 and 59, as the same are designated in the Complaint and Order for Immediate Possession on file herein, is hereby terminated; that defendant Cal-Bay Corporation may continue in possession and may continue its operations on said Parcels 58 and 59 until thirty (30) days after service of this Notice as provided in said Order of Court; and that thereupon defendant Cal-Bay Corporation shall forth-

with [15] vacate said Parcels 58 and 59 and shall surrender the same to plaintiff.

Reference is made to the said Order of Court dated September 28, 1944, which is incorporated in this Notice by reference.

Dated, December 15, 1944.

/s/ M. MITCHELL BOURQUIN,
Special Assistant to The Attorney General
Attorney for Plaintiff.

Receipt of a copy of the foregoing Notice of Termination of Right to Possession of Parcels 58 and 59 in this Action, is hereby acknowledged, this 15th day of December, 1944.

FITZGERALD, ABBOTT & BEARDSLEY,
Attorneys for Defendant.

[Endorsed]: Filed Dec. 20, 1944.

[Title of District Court and Cause.]

STIPULATION FOR FINAL JUDGMENT ON
PARCEL 58; AND ORDER DIRECTING
PAYMENT OF MONEY TO DEFENDANT

It is hereby stipulated and agreed by and between the United States of America, hereinafter called plaintiff, and Edward Faria, hereinafter described as defendant, as follows:

I.

The Complaint was filed in this action on July 22,

1944, and defendant acknowledges that he has been served with a copy of the Complaint, Summons and Order for Immediate Possession in this action.

II.

Plaintiff agrees to pay to defendant and defendant agrees to accept the sum of four hundred and no-100 dollars (\$400.00), as full, adequate and just compensation for the taking of said [17] Parcel 58, as described in this action, and for all his right, title and interest in and to any property subject to this action; excepting from said taking, mineral rights set forth in instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 18; instrument dated February 21, 1942 and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 24; instrument dated April 28, 1942 and recorded August 7, 1942 in Volume 674 of Official Records of Contra Costa County, at page 55; instrument dated August 11, 1941 and recorded April 10, 1942 in Volume 637 of Official Records of Contra Costa County, at page 488; instrument dated February 21, 1942 and recorded April 10, 1942 in Volume 655 of Official Records of Contra Costa County, at page 23; instrument dated August 11, 1941 and recorded August 7, 1942 in volume 672 of Official Records of Contra Costa County, at page 473.

III.

Defendant warrants that at the time of and immediately prior to the filing of this action by

plaintiff, defendant was the owner of said Parcel 58, and defendant is entitled to all the compensation to be paid for the taking thereof, subject to the exceptions contained in preliminary title report No. 414802 issued by Title Insurance and Guaranty Company, San Francisco, California (Contra Costa No. 90262-58), and said defendant consents that upon the entry of an order of this Court in the form attached hereto, directing the payment to Contra Costa County Title Company, Martinez, California, of the sum of four hundred and no/100 dollars (\$400.00), without interest, for defendant's account, a Final Judgment may be entered without notice to defendant, in favor of plaintiff and against defendant, condemning [18] said Parcel 58, in fee simple absolute, and any right, title and interest of the defendant in and to said parcel and any property subject to this action, except mineral rights described in Paragraph II hereof; and defendant further consents that the correct description of property included in said Parcel 58 may be set forth in said Final Judgment.

IV.

It is further stipulated and agreed that the agreed sum of four hundred and no/100 dollars (\$400.00) may be deposited by plaintiff in the Registry of the Court as just compensation for said land, and that the Court may direct the Clerk to pay said sum to Contra Costa County Title Company, as agent for defendant, and Contra Costa County Title Company may, as agent for defendant, without charge or cost to defendant, pay and satisfy all

taxes, liens and other charges against said property, except mineral rights provided by instruments particularly described in Paragraph II hereof, and pay the balance to said defendant.

UNITED STATES OF
AMERICA

By /s/ M. MITCHELL BOURQUIN,
Special Assistant to The
Attorney General
Attorney for Plaintiff.

/s/ EDWARD FARIA,
ORLINDA FARIA,
Wife of Edward Faria,
Defendant,

The signature of Edward Faria sworn to before
me this 1st day of March, 1945.

[Seal] E. P. JACKSON,

Notary Public in and for the County of Contra
Costa, State of California.

My commission expires July 20, 1947.

ORDER

Pursuant to the terms of the attached Stipulation, the clerk of the above entitle Court is hereby directed to receive from plaintiff and pay to Contra Costa County Title Company, as agent for Edward Faria, defendant named in the Stipulation attach hereto, the sum of four hundred and no/100 dollars

(\$400.00), as full, just and adequate Compensation for the taking by plaintiff of Parcel 58, excepting mineral right described in paragraph II of the attached Stipulation; and plaintiff is directed to prepare Final Judgment in accordance with said stipulation.

Dated: March 8th, 1945.

/s/ LOUIS E. GOODMAN,

Judge, United States District Court, Northern
District of California.

[Endorsed]: Filed March 8, 1945.

[Title of District Court and Cause.]

STIPULATION FOR FINAL JUDGMENT ON
PARCEL 59; AND ORDER DIRECTING
PAYMENT OF MONEY TO DEFENDANT

It is hereby stipulated and agreed by and between the United States of America, hereinafter called plaintiff, and Maria Faria (also known as Mary Faria), hereinafter described as defendant, as follows:

I.

The Complaint was filed in this action on July 22, 1944, and defendant acknowledges that she has

been served with a copy of the Complaint, Summons and Order for Immediate Possession in this action.

II.

Plaintiff agrees to pay to defendant and defendant agrees to accept the sum of twenty-seven thousand and no/100 [21] dollars (\$27,000.00) (including salvage to defendant in the amount of \$220.00), as full, adequate and just compensation for the taking of said Parcel 59, as described in this action, and for all her right, title and interest in and to any property subject to this action; excepting from said taking, mineral rights set forth in instrument dated August 11, 1941 and recorded April 10, 1942 in Volume 637 of Official Records of Contra Costa County, at page 488; instrument dated February 21, 1942 and recorded April 10, 1942 in Volume 655 of Official Records of said Contra Costa County, at page 23; and instrument dated April 28, 1942 and recorded August 7, 1942 in Volume 672 of Official Records of said Contra Costa County, at page 473.

III.

Defendant warrants that at the time of and immediately prior to the filing of this action by plaintiff, defendant was the owner of said Parcel 59, and defendant is entitled to all the compensation to be paid for the taking thereof, subject to the exceptions contained in preliminary title report No. 414802 issued by Title Insurance and Guaranty Company, San Francisco, California (Contra

Costa No. 90262-59), and said defendant consents that upon the entry of an Order of this Court in the form attached hereto, directing the payment to Contra Costa County Title Company, Martinez, California, of the sum of Twenty-six thousand, seven hundred eighty and no/100 dollars (\$26,780.00), without interest, for the defendant's account, a Final Judgment may be entered without notice to defendant, in favor of plaintiff and against defendant, condemning said Parcel 59, in fee simple absolute, and any right, title and interest of the defendant in and to said parcel and any property subject to this action, except mineral rights described in Paragraph II hereof; and defendant further consents that the correct description of property included [22] in said Parcel 59 may be set forth in said Final Judgment.

IV.

It is further stipulated and agreed that the agreed sum of twenty-six thousand seven hundred eighty and no/100 dollars (\$26,780.00) may be deposited by the plaintiff in the Registry of the Court as Just compensation, for said land, and that the Court may direct the Clerk to pay said sum to Contra Costa County Title Company as agent for defendant, and Contra Costa County Title Company may as agent for defendant, without charge or cost to defendant, pay and satisfy all taxes, liens and other charges against said property, except mineral rights provided by instruments particularly de-

scribed in Paragraph II heretofore, and pay the balance to said defendant.

UNITED STATES OF AMERICA,
Plaintiff.

/s/ M. MITCHELL BOURQUIN,

Special Assistant to the Attorney
General,

Attorney for Plaintiff.

Her X Mark

MARY FARIA, also known as
Mary Faria.

The signature of Maria Faria, also known as Mary Faria, sworn to before me, this 1st day of March, 1945.

[Seal] /s/ E. P. JACKSON,

Notary Public in and for the
County of Contra Costa.

My commission expires July 20, 1947.

Maria Faria being unable to write, made her mark in our presence, and requested the undersigned E. P. Jackson, to write her name, which he did; and we now sign our names as witnesses thereto.

/s/ E. P. JACKSON,

/s/ L. L. BOLLA.

ORDER

Pursuant to the terms of the attached Stipulation, the Clerk of the above entitled Court is hereby directed to receive from plaintiff and pay

to Contra Costa County Title Company, as agent for Maria Faria (also known as Mary Faria), defendant named in the Stipulation attached hereto, the sum of twenty-six thousand seven hundred eighty and no/100 dollars (\$26,780.00) (defendant having received \$220.00 in salvage), as full just and adequate compensation for the taking by Plaintiff of Parcel 59, excepting mineral rights described in paragraph II of the attached Stipulation; and plaintiff is directed to prepare Final Judgment in accordance with said Stipulation.

LOUIS E. GOODMAN,

Judge, United States District Court, Northern
District of California.

Dated March 12, 1945.

[Endorsed]: Filed March 12, 1945. [24]

[Title of District Court and Cause.]

STIPULATION FOR FINAL JUDGMENT ON
PARCEL 57, AND ORDER DIRECTING
PAYMENT OF MONEY TO DEFENDANT

It is hereby stipulated and agreed by and between the United States of America, hereinafter called plaintiff and Mae E. Roche, hereinafter described as defendant, as follows:

I.

The Complaint was filed in this action on July 22, 1944, and defendant acknowledges that he has been served with a copy of the Complaint, Sum-

mons and Order for Immediate Possession in this action.

II.

Plaintiff agrees to pay to defendant and defendant agrees to accept the sum of fifteen thousand and no/100 [25] dollars (\$15,000.00), as full, adequate and just compensation for the taking of said Parcel 57, as described in this action, and for all her right, title and interest in and to any property subject to this action; excepting from said taking, mineral rights set forth in instrument dated August 11, 1941 and recorded April 10, 1942 in Volume 643 of Official Records of Contra Costa County, at page 10; instrument dated February 21, 1942 and recorded April 10, 1942 in Volume 655 of Official Records of said Contra Costa County, at page 21; instrument dated April 28, 1942 and recorded August 7, 1942 in Volume 628 of Official Records of said Contra Costa County, at page 278; instrument dated August 11, 1941 and recorded April 10, 1942, in Volume 637 of Official Records of said Contra Costa County, at page 488; instrument dated February 21, 1942 and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 23; and instrument dated April 28, 1942 and recorded August 7, 1942 in Volume 672 of Official Records of said Contra Costa County, at page 473.

III.

Defendant warrants that at the time of and immediately prior to the filing of this action by

plaintiff, defendant was the owner of said Parcel 57, and defendant is entitled to all the compensation to be paid for the taking thereof, subject to the exceptions contained in preliminary title report No. 414802 issued by Title Insurance and Guaranty Company, San Francisco, California (Contra Costa No. 90262-57), and said defendant consents that upon entry of an Order of this Court in the form attached hereto, directing the payment to Contra Costa County Title Company, Martinez, California, of the sum of fifteen thousand and no/100 dollars (\$15,000.00), without interest, for defendant's account, a Final Judgment may be entered without [26] notice to defendant, in favor of plaintiff and against defendant, condemning said Parcel 57, in fee simple absolute, and any right, title and interest of the defendant in and to said parcel and any property subject to this action, except mineral rights described in Paragraph II hereof; and defendant further consents that the correct description of property included in said Parcel 57 may be set forth in said Final Judgment.

IV.

It is further stipulated and agreed that the agreed sum of fifteen thousand and no/100 dollars (\$15,000.00) may be deposited by plaintiff in the Registry of the Court as just compensation for said land, and that the Court may direct the Clerk to pay said sum to Contra Costa County Title Company, as agent for defendant, and Contra Costa County Title Company may, as agent for defendant, without charge or cost to defendant,

pay and satisfy all taxes, liens and other charges against said property, except mineral rights provided by instruments particularly described in Paragraph II hereof, and pay the balance to said defendant.

UNITED STATES OF
AMERICA,

Plaintiff

By /s/ M. MITCHELL BOURQUIN,
Special Assistant to The
Attorney General
Attorney for Plaintiff

/s/ MAE E. ROCHE,
CHARLES ROCHE,
Defendant.

The signature of Mae E. Roche sworn to before me, this 2nd day of March, 1945.

[Seal] E. P. JACKSON,

Notary Public in and for the State of California,
County of Contra Costa.

My commission expires July 20, 1947. [27]

ORDER

Pursuant to the terms of the attached Stipulation, the Clerk of the above entitled Court is hereby directed to receive from plaintiff and pay to Contra Costa County Title Company, as agent for Mae E. Roche, defendant named in the Stipu-

lation attached hereto, the sum of fifteen thousand and no/100 dollars (\$15,000.00), as full, just and adequate compensation for the taking by plaintiff of Parcel 57, excepting mineral rights described in paragraph II of the attached Stipulation; and plaintiff is directed to prepare Final Judgment in accordance with said Stipulation.

Dated March 12th, 1945.

/s/ LOUIS E. GOODMAN,

Judge, United States District Court,
Northern District of California

[Endorsed]: Filed March 12th, 1945. [28]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT JOSEPH
FARIA, JR.

Defendant, Joseph Faria, Jr., answers the complaint as follows:

1. At the time of the commencement of this action, said defendant was, ever since has been, and now is, the owner of a leasehold interest and estate, in the hereinafter designated portions of the real property sought to be condemned, under oil and gas leases executed by the holders of the fee simple title thereto, under the terms of which leases said defendant had the exclusive right of exploring, mining and operating thereon for oil, gas and cas-

hydrocarbon gas, and other hydrocarbon substances, and taking, storing, removing and disposing of same, and manufacturing gasoline and other products therefrom, with the right for such purposes to the free use of oil, gas and water thereon, but [29] not from Lessee's water wells or ponds, and the right to build tanks, power houses, stations, houses for employees and such other structures (excepting refinery) as might be necessary or convenient in his operations, together with rights-of-way, easements and servitudes for pipe lines, power lines, telephone and telegraph lines, with the right of removing any and all improvements placed or erected thereon by Lessee, including the right to pull and casing, for terms extending to the years 1961 and 1962 (the exact date being as set forth in paragraph 2 hereof), and so long thereafter as oil or gas, or hydrocarbon gas, or other hydrocarbon substances, or water or any of them is produced thereon in quantities deemed paying by Lessee.

2. The real property subject to said leasehold interest and estate is situated in Contra Costa County, California, and described as follows:

(a) Property leased from Ralph D. Hoffman, the certain term under the lease extending to August 31, 1961

Parcel 1

Lot One (1) and Two (2) of the Northwest Quarter (NW $\frac{1}{4}$) of Section One (1), Township One (1) North of Range One (1) West, Mount Diablo Base and Meridian. Containing One Hun-

dred and Forty-five (45) acres of land, more or less.

Also a certain easement for road about 12 feet in width for ingress and egress to the above-described premises and more particularly located and described as follows:

Commencing at a point on the County road approximately 250 feet south of what is known as the Hillman house on the Hillman ranch, adjoining the above-described land, thence from said County road in a northerly direction across said Hillman ranch a distance of approximately 250 feet to the southerly side of the east and west line of said lots Nos. 1 and 2 of the Northwest Quarter (NW $\frac{1}{4}$) of Section One (1) Township One (1) North of Range One (1) West, Mount Diablo Base and Meridian, less 1.96 acres heretofore deeded to United States of America:

Parcel II

All that certain tract of land situate in said Contra Costa County, State of California, described as follows:

Being a portion of the 600-acre tract sold by S. Pacheco to George Maschick, March 30th, 1863, and bounded Northwest by lands of Darr Sharp, Northeast by lands of Andrew Gehmager, [30] Southwest by lands of John Denkinger and Southeast by Ayres lands, and containing 186 acres of land, and known as the Mette place, and also known as the Daniel Matheson, in the Rancho del Diablo:

and being the same land conveyed to Daniel Matheson by George Mascarich and wife by deed dated Oct. 30th, 1883, and recorded Nov. 3, 1883, in Vol. 44 of Deeds at page 136, records of Contra Costa County, California, less 6.71 acres heretofore deeded to United States of America:

Parcel III

Commencing at a stake in a mound on the Eastern side of the Monte del Diable Rancho, this stake being the Southeast corner of tract of land sold by George Mascarich to Andrew Gehringer: thence S. $43\frac{1}{2}$ Deg. W. 75 chains to stake corner: thence, at right angles S. $46\frac{1}{2}$ Deg. E. $15.33\frac{1}{3}$ chains to a stake corner: thence at right angles N. $43\frac{1}{3}$ Deg. East 75 chains to a stake corner: thence at right angles North $46\frac{1}{2}$ Deg. West $15.33\frac{1}{3}$ chains to a point of beginning, containing 115 acres of land, according to the survey made by James B. Abbott Feb. 23, 1863, being the same property deeded by H. Robinson to Dorr Sharp, by deed executed Oct. 4, 1877, recorded Oct. 11th, 1877, in Vol. 34 of Deeds at page 281, Records of Contra Costa County, and is the same property conveyed by Dorr Sharp to Andrew Gehringer by deed dated Nov. 5th, 1885, and recorded Nov. 5, 1885, in Vol. 47 of Deeds at page 266;

Parcel IV

Beginning at the S. E. Corner of that certain tract of land conveyed by George Mascarich to Andrew Gehringer March 31st, 1863, thence N. $43\frac{1}{2}$ Deg.

East running along the East boundary of lands of Gehringer estate 37.61 chains to station, being the corner to divisions "A" and "C" of the Gehringer Estate Partition, thence N. 52 Deg. 53' W. 11.695 chains to station at the N.E. Boundary of private road; thence S. 43 Deg. W. 36.43 chains to station in South line of lands of Gehringer estate at the corner of Divisions "A" and "B;" thence S. 47 Deg. 5' E. 11.595 chains into place of beginning, containing an area of 43.00 acres of land;

Also Part 2 Division "B" of said Gehringer Estate, being portions of Rancho Monte del Diablo and portion of Section 27, T. 1 N., R. 1 W., M.D.M., described as follows:

Beginning at the Northwest corner of a tract of land conveyed by Andrew Gehringer to H. G. Bollman by deed dated February 24th, 1886; thence S. 46 Deg. 50' E. (following fence line and along North boundary of Bollman's land); 40.18 chains to station corner to lands of Matherson (Matheson) and Bollman; thence N. 43 Deg. E. 25.78 chains to station in North boundary of Rancho Monte del Diablo; thence S. $47\frac{1}{2}$ Deg. E. running along said boundary line 10.00 chains to station to the point of intersecion of the center line of Section 27 T. 1 N., R. 1 W. with the same ranch boundary; thence N. $\frac{1}{2}$ Deg. W. running along the center line of Sec. 27, 64.00 chains to quarter section corner between Sections 22 and 27, T. 1 N., R. 1 W.; thence S. $89\frac{1}{4}$ Deg. running along and between Sections 22 and 27, 37.22 chains to station; thence S. $21\frac{3}{4}$ Deg. E. 6.50

chains to station in fence; thence S. 8 Deg. E. 5.84 chains (following fence) to station; thence S. 34 Deg. E (following fence 10.78 chains to station); thence S. $43\frac{1}{4}$ Deg. W. 37.67 chains into the place of beginning;

Containing an area of 263.41 acres of land; [31]

Also one-third ($\frac{1}{3}$) undivided interest in a private road 40 feet wide described as follows:

Beginning at gate post where the South line of the private road intersects west line of lands of Gehringer Estate; thence S. $48\frac{3}{4}$ Deg. E. running along the North line of Division "A" of Gehringer Estate Partition 20.16 chains to station; thence S. 52 Deg. 53' E. 8.575 chains to station; thence 43 Deg. E. 40 feet; thence N. 52 Deg. 53' W. 8.575 chains to station; thence N. $48\frac{3}{4}$ Deg. E. 20.16 chains to West line of lands of Gehringer Estate; thence S. 43 Deg. W. 40 feet into place of beginning, containing 1.75 acres;

Also one-third undivided interest in a certain strip of land used as a private road, conveyed by Salvio Pacheco to Andrew Gehringer, by deed dated March 12th, 1866, recorded in Vol. 13 of Deeds, page 405, records of Contra Costa County, and described as follows, to-wit:

Beginning at fence post situated in a gate way in West line of lands of Gehringer Estate, thence N. $59\frac{1}{2}$ Deg. W. along North boundary of road crossing Diablo Creek 24.45 chains to station; thence N. $65\frac{3}{4}$ Deg. W., 14.06 chains to station; thence N.

73 $\frac{3}{4}$ Deg. W. 6.51 chains to station; thence S. 80 Deg. W. 17.59 chains to station; thence N. 73 $\frac{3}{4}$ Deg. W. 9.39 chains to station; thence N. 71 $\frac{1}{2}$ Deg. W. 11.68 chains to station in East boundary of Willow Pass Road; thence Southerly along east boundary of said road 33 feet to station; thence running Easterly parallel with Northern boundary of private road to station in West line of lands of Gehringer Estate, at N.W. corner of Division "A"; thence Northerly running along Westerly line of lands of Gehringer Estate, 33 feet into place of beginning, containing an area of 4.18 acres of land;

The partition of the Gehringer Estate and the subdivision thereof hereinbefore referred to are as shown on a certain map made by Elan C. Brown, County Surveyor of Contra Costa County, and filed in the office of the County Recorder of Contra Costa County, on the 27th day of February, 1897;

There is excluded and excepted from the foregoing described parcels No. 2, No. 3, and No. 4 and which is not included in the appraisement thereof, that certain strip or tract of land situate in said County of Contra Costa, State of California, described as follows, to-wit:

A strip or tract of land 70 feet wide across the lands of the parties of the first part (H. G. Bollman and Mattie Smith-Bollman) hereinafter mentioned, being the strip or tract of land included between two parallel lines extending across said lands of the parties of the first part and drawn one on each side of the located center line of the railroad of the

party of the second part (Bay Point & Clayton Railroad Company) and 35 feet distant therefrom, said center line being more particularly described in that certain deed bearing date November 28th, 1906, made by and between H. G. Bollman and wife, as parties of the first part and Bay Point & Clayton Railroad Company, a corporation, party of the second part, filed for record and recorded the 28th day of November, 1906, in Vol. 22 of Deeds at page 216, records of Contra Costa County, California, and hereby referred to for greater certainty. Containing five acres of land, more or less.

(b) Property leased from Mary Faria, the certain [32] term under the lease extending to August 11, 1961, described as follows:

That portion of the $S\frac{1}{2}$ of the $SE\frac{1}{4}$ of Sec. 21 T2N R1W that is a part of Lot 3, containing 73.51 acres, and being that portion of the property leased by Mary Faria to Joseph Faria, Jr., and Bud Hildebrand, by lease dated August 11, 1941, and recorded in Book 637 of Official Records, page 488, of the Records of said Contra Costa County, remaining after the assignment to Cal-Bay Corporation, recorded in Volume 672, page 473, Records of said County;

(c) Property leased from Geraldine Faria, the certain term under the lease extending to December 23, 1961, described as follows:

$S\frac{1}{2}$ of $NW\frac{1}{4}$ of Sec. 22 T2N R1W; containing

80 acres, more or less, excepting therefrom the East 7 acres and the West 12 acres; also SW $\frac{1}{2}$ of Sec. 22, T2N R1W, containing a total of 221 acres, more or less, being the property described in the lease from Geraldine Faria to Joseph Faria, Jr., and Bud Hildebrand, dated December 23, 1941, and recorded in Book 652 of Official Records, page 13, Records of said Contra Costa County.

3. Said defendant alleges that on the date possession was taken by plaintiff, namely, July 24, 1944, the actual value of said leasehold interest and estate taken by plaintiff was as follows:

(a)	Part taken in Parcel 3A	\$19,800.00
(b)	Part taken in Parcel 59	17,500.00
(c)	Part taken in Parcel 64	200.00
		<hr/>
	Total	\$37,500.00

4. Said leasehold interest and estate in the real property described in paragraph 2 hereof constitutes the larger parcel of which the part taken is a part; said defendant alleges damages to the portion of said leasehold interest and estate not taken, by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by plaintiff, in the sum of \$6,000.00.

Wherefore, said defendant prays judgment, if said property is condemned as sought by plaintiff, for the sum of \$43,500.00, together with interest

thereon, at the rate of 6% per [33] annum, from July 24, 1944.

FITZGERALD, ABBOTT &
BEARDSLEY,

Attorneys for Defendant,
Joseph Faria, Jr.

United States of America,
Northern District of California,
County of Alameda—ss.

Joseph Faria, Jr., being first duly sworn, deposes
and says:

That he is the defendant who files the foregoing
answer; that he has read said answer and it is true
of his own knowledge.

JOSEPH FARIA, JR.

Subscribed and sworn to before me January 15,
1946.

[Seal] CONSTANCE E. MULVANY,
Notary Public in and for said Alameda County,
California.

NOTICE OF ASSUMPTION OF BURDEN OF
PROOF AND DEMAND FOR JURY TRIAL

Said defendant assumes the burden of proof, and demands a jury trial, on the issue as to the amount of compensation.

FITZGERALD, ABBOTT &
BEARDSLEY,
Attorneys for Defendant,
Joseph Faria, Jr.

Received copy of the foregoing answer, notice and demand January 16, 1946.

M. MITCHELL BOURQUIN,
Special Assistant to the
Attorney General,
Attorney for Plaintiff.

[Endorsed]: Filed Jan. 18, 1946. [34]

[Title of District Court and Cause.]

AMENDMENT TO ANSWER OF DEFENDANT
JOSEPH FARIA, JR.

Now comes the defendant Joseph Faria, Jr., and hereby amends the Answer heretofore filed by him to Plaintiff's Amended Complaint, in the following particulars, viz:

Said defendant amends Paragraphs 3 and 4 and the prayer of his said Answer so that said Para-

graphs 3 and 4 and said prayer shall read as follows, to-wit:

3. Said defendant alleges that on the date possession was taken by plaintiff, namely, July 24, 1944, the actual value of said leasehold interest and estate taken by plaintiff was as follows: [35]

(a) Part taken in Parcel 3A	\$20,975.00
(b) Part taken in Parcel 59	17,575.00
(c) Part taken in Parcel 64	175.00

Total	\$38,725.00
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4. Said leasehold interest and estate in the real property described in paragraph 2 hereof constitutes the larger parcel of which the part taken is a part; said defendant alleges damages to the portion of said leasehold interest and estate not taken, by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by plaintiff, in the sum of \$31,850.00.

Wherefore, said defendant prays judgment, if said property is condemned as sought by plaintiff, for the sum of \$70,575.00, together with interest thereon, at the rate of 6% per annum, from July 24, 1944.

A. J. SCAMPINI,
WALTER E. HETTMAN,
HERBERT CHAMBERLIN,

Attorneys for Defendant,
Joseph Faria, Jr.

United States of America,
Northern District of California,
City and County of San Francisco—ss.

Joseph Faria, Jr., being first duly sworn, deposes and says:

That he is the defendant who files the foregoing Amendment to Answer; that he has read said Amendment to Answer and it is true of his own knowledge.

JOSEPH FARIA, JR.

Subscribed and sworn to before me this 14th day of August, 1946.

[Seal] MARY T. COLLINS,

Notary Public in and for the City and County of
San Francisco, State of California.

(Acknowledgment of receipt of copy.)

[Endorsed]: Filed Aug. 22, 1946. [36]

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANT
CAL-BAY CORPORATION

Defendant, Cal-Bay Corporation, answers the complaint herein as follows:

1. At the time of the commencement of this action, said defendant, a California corporation, was, ever since has been, and now is, the owner of a leasehold interest and estate, in the hereinafter

designated portions of the real property sought to be condemned, under oil and gas leases executed by the holders of the fee simple title thereto, under the terms of which leases said defendant had the exclusive right of exploring, mining and operating thereon for oil, gas and casinghead gas, and other hydrocarbon substances, and taking, storing, removing and disposing of same, and manufacturing gasoline and other products therefrom, with the right for such purposes to the free use of oil, gas and water [37] thereon, but no from Lessors' water wells or ponds, and the right to build tanks, power houses, stations, houses for employees and such other structures (excepting refinery) as might be necessary or convenient in its operations, together with rights-of-way, easements and servitudes for pipe lines, power lines, telephone and telegraph lines, with the right of removing any and all improvements placed or erected thereon by Lessee, including the right to pull all casing, for terms extending to the years 1961 and 1962 (the exact dates being as set forth in paragraph 2 hereof), and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced thereon in quantities deemed paying by Lessee.

2. The real property subject to said leasehold interest and estate is situate in Contra Costa County, California, and described as follows:

(a) The southwest quarter (SW $\frac{1}{4}$) of Section Fifteen (15), the north half (N $\frac{1}{2}$) of the

northeast quarter ($NE\frac{1}{4}$) of Section Twenty-one (21), and the North half ($N\frac{1}{2}$) of the northwest quarter ($NW\frac{1}{4}$) of Section Twenty-two (22), all in Township Two (2) north, of Range one (1) west, Mt. Diablo Meridian,

leased from Manuel V. Alvernaz and wife, the certain term thereunder extending to March 3, 1962;

(b) A TR of LD BD N & E BY LD of Anton Faria S by LD of Blume et al W by LD of John Faria, being a por. of $NW\frac{1}{4}$ of Sec. 21 T2N, R1W Contg. 4.96 Ac.,

leased from Mae E. Dutra, the certain term thereunder extending to August 11, 1961;

(c) Lot 2 Sec. 21 T2N, R1W, 38.72 ac.

Por. Lot 1 & $SE\frac{1}{4}$ of $NW\frac{1}{4}$ of Sec. 21 T2N, R1W, 76.64 ac. $S\frac{1}{2}$ of $NE\frac{1}{4}$ of Sec. 21 T2N, R1W & W 12 ac. of $S\frac{1}{2}$ of $NW\frac{1}{4}$ of Sec. 22 T2N, R1W, 92 ac.

Lot 3 & Fract'l $SE\frac{1}{4}$ of Sec. 21 T2N, R1W, 155.51 ac. $N\frac{1}{2}$ of $NW\frac{1}{4}$ of Sec. 21, T2N, R1W, 80 ac. and containing 440.87 acres, more or less.

Except that part of the $S\frac{1}{2}$ of $SE\frac{1}{4}$ of Sec. 21 which is a part of Lot 3, and amounting to 73.51 acres, leased from Mary Faria, the certain term thereunder extending to August 11, 1961;

(d) Portion of the southwest $\frac{1}{4}$ of the

northwest $\frac{1}{4}$ of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian, containing 5 acres, more or less, described as follows:

Beginning at a point which bears north $2^{\circ} 33'$ west, 43.51 feet from a concrete monument in the easterly line of the Rancho Monte Del Diablo, which monument is the most northerly corner of the parcel of land described in the deed of trust from Joseph Williams, Jr., et ux, to Willard D. Ellis, et al., trustees for the Federal Land Bank of Berkeley, dated January 1, 1934, and recorded January 23, 1934, in Volume 353 of Official Records, at page 312; thence from said point of beginning north $30^{\circ} 10'$ east 570.68 feet; thence south $46^{\circ} 15'$ east 392.48 feet; thence south $30^{\circ} 10'$ west 570.58 feet; thence north $46^{\circ} 15'$ west 392.48 feet to the point of beginning,

leased from Edward Faria, the certain term thereunder extending to August 11, 1961.

3. Said defendant alleges actual values of said leasehold interest and estate taken by plaintiff, as follows:

(a)	Part taken in Parcel 57	\$ 3,850.00
(b)	Part taken in Parcel 58	\$ 3,900.00
(c)	Part taken in Parcel 59	\$461,000.00
Total		<hr/> \$468,750.00

4. Said leasehold interest and estate in the real property described in paragraph 2 hereof constitutes the larger parcel of which the part taken is a part; said defendant alleges damages to the portion of said leasehold interest and estate not taken, by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by plaintiff, in the sum of \$150,000.00.

5. Said defendant having been permitted, by stipulation of the parties, to retain possession of the portion of its leasehold interest and estate within Parcels 58 and 59, and to carry on its drilling and other operations thereon, until January 15, 1945, the values herein alleged as applicable to said Parcels are the values as of said date; the other value is the value as of the date of the [39] taking of possession by the plaintiff, namely, July 24, 1944.

Wherefore, said defendant prays judgment, if said property is condemned as sought by plaintiff, for the sum of \$618,750.00, together with interest at the rate of 6 per cent per annum from July 24, 1944, on the sum awarded, applicable to Parcel 57, and from January 15, 1945, as to the remainder of said award.

A. J. SCAMPINI,
WALTER HETTMAN,
HERBERT CHAMBERLIN,

Attorneys for Defendant.

United States of America,
Northern District of California,
County of Contra Costa—ss.

Joseph Faria, Jr., being first duly sworn, deposes and says: that he is president of defendant, Cal-Bay Corporation, which files the foregoing answer; that he has read said amended answer and it is true of his own knowledge.

JOSEPH FARIA, JR.

Subscribed and sworn to before me this 31st day of December, 1946.

[Seal] MITA A. CHESELDINE,

Notary Public in and for said Contra Costa County,
California.

My commission expires Jan. 25, 1949.

NOTICE OF ASSUMPTION OF BURDEN OF
PROOF AND DEMAND FOR JURY TRIAL

Said defendant assumes the burden of proof, and demands a jury trial on the issue as to the amount of compensation.

A. J. SCAMPINI,
WALTER HETTMAN,
HERBERT CHAMBERLIN,

Attorneys for Defendant.

(Acknowledgment of receipt of copy.)

[Endorsed]: Filed Jan. 6, 1947. [40]

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANT
MAE E. ROCHE

Now comes the defendant Mae E. Roche, and answers the complaint herein as follows:

1. On July 22, 1944, on which date the complaint of the plaintiff was filed in this action and summons issued, this defendant was the owner in fee simple absolute of the following described real property lying and being in the County of Contra Costa, State of California, and more particularly described as follows, to wit:

Beginning at a point on the Northerly boundary line of Rancho Monte del Diablo where said line is intersected by the Westerly line of Section 21, Township 2 North, Range 1 West, thence running along the Westerly boundary line of Section 21, North 689.97 feet to a point; thence leaving the westerly boundary of Section [41] 21, South 74° 53' East, 333.40 feet to a point; thence South 0° 47½' East, 351.38 feet to a point; thence South 72° 31' East, 29.97 feet to a point; thence South 28° 35' West, 430.40 feet to a point in fence line and Northerly boundary line of Rancho Monte del Diablo; thence along said fence and boundary line North 47° 49' West, 201.53 feet to the point of beginning. Containing 4.96 acres and being a portion of the Northwest quarter of Section 21, Township 2 North, Range 1 West, and this

being the same property transferred by deed dated December 3, 1927, from Antone Faria, et ux, to Frank J. Dutra.

Said parcel of land is designated as "Parcel 57" in plaintiff's complaint as amended and filed herein.

2. At the time of the commencement of this action on July 22, 1944, this defendant was the owner in connection with said Parcel 57 of mineral rights set forth in the following instruments:

(a) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 643 of Official Records of Contra Costa County, at page 10;

(b) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 21;

(c) An instrument dated April 28, 1942, and recorded August 17, 1942, in Volume 628 of Official Records of said Contra Costa County, at page 278;

(d) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of said Contra Costa County, at page 488;

(e) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 23; [42]

(f) An instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 672 of Official Records of said Contra Costa County, at page 473.

3. Said mineral rights of this defendant were taken from her by plaintiff on July 24, 1944, and at the time of said taking the actual value thereof was the sum of \$3,500.

4. On March 1, 1945, plaintiff and this defendant entered into a written stipulation approved by the above entitled Court whereunder and whereby plaintiff agreed to pay and did pay this defendant the sum of \$15,000 as full, adequate and just compensation for taking of said Parcel 57 excepting the said mineral rights of this defendant.

Wherefore, this defendant prays that she be awarded just compensation herein and to that end, that this defendant be awarded the value of the mineral rights of this defendant in said Parcel 57 sought to be condemned and taken by the plaintiff, namely, the sum of \$3,500; and further, that this defendant be awarded judgment for interest as provided by law, and for costs of suit herein incurred, and for such other and further relief as to the Court may seem meet and proper in the premises.

/s/ A. J. SCAMPINI,

/s/ WALTER HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for Defendant.

NOTICE OF ASSUMPTION OF BURDEN OF
PROOF AND DEMAND FOR JURY TRIAL

Said defendant assumes the burden of proof, and demands a jury trial on the issue as to the amount of compensation. [43]

/s/ A. J. SCAMPINI,

/s/ WALTER HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for Defendant.

Received copy of the foregoing amended answer, notice and demand. January 6, 1947.

M. MITCHELL BOURQUIN,

Special Assistant to the
Attorney General,

Attorney for Plaintiff.

State of California,
County of Contra Costa—ss.

Mae E. Roche, being first duly sworn, deposes and says:

That she is the defendant in the above entitled action; that she has read the foregoing Amended Answer and knows the contents thereof; that the same is true of her own knowledge, except as to those matters therein stated on information and be-

lief, and that as to those matters, she believes it to be true.

MAE E. ROCHE.

Subscribed and sworn to before me this 31st day of December, 1946.

[Seal] N. E. GRAHAM,

Notary Public in and for the County of Contra Costa, State of California.

My commission expires August 10, 1947.

[Endorsed]: Filed Jan. 6, 1947. [44]

[Title of District Court and Cause.]

AMENDED ANSWER OF MARIA FARIA,
ALSO KNOWN AS MARY FARIA

Now comes the defendant, Maria Faria, also known as Mary Faria, and does hereby amend the answer heretofore filed by her in the above entitled cause and states as follows:

1. On July 22, 1944, on which date the complaint of the plaintiff was filed in this action and summons was caused to be issued, this defendant was the owner in fee simple absolute of the following described real property, lying and being in the County of Contra Costa, State of California, and more particularly described as follows, to wit:

(A) Lots 1, 2 and 3, the Southeast quarter of the Northwest quarter; the North half of the

Northwest quarter; the Southeast quarter of the Southeast quarter; the North half of the Southeast quarter, and the South half of the Northeast quarter of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian. [45]

(B) A portion of the Southwest quarter of the Northwest quarter of Section 22, Township 2 North, Range 1 West, Mt. Diablo Base & Meridian, described as follows:

Commencing at the Southwest corner of said Southwest quarter of the Northwest quarter of said Section 22; thence Northeasterly in a direct line to a point on the North line of said Southwest quarter of the Northwest quarter of Section 22, distant East 48.00 rods from the Northwest corner of said Southwest quarter of the Northwest quarter of said Section 22; thence West along the said Northerly line, 48.00 rods to the Northwest corner of the Southwest quarter of the Northwest quarter of Section 22; thence South along the West line of said Northwest quarter of said Section 22, to the place of commencement.

saving and excepting from the property described under (A) the following pieces and parcels of land, to wit:

(1) That certain parcel described in deed dated May 2, 1940, executed by Mary Faria to Mae E. Dutra, recorded February 24, 1941, in Book 587 of Official Records, page 51, Records

of Contra Costa County, State of California, described as follows:

Beginning at a point on the Northerly boundary line of Ranch Monte del Diablo where said line is intersected by the Westerly line of Section 21, Township 2 North, Range 1 West, thence running along the Westerly boundary line of Section 21, North 689.97 feet to a point; thence leaving the westerly boundary of Section 21, South $74^{\circ} 53'$ East, 333.40 feet to a point; thence South $0^{\circ} 47\frac{1}{2}'$ East, 351.38 feet to a point; thence South $72^{\circ} 31'$ East, 29.97 feet to a point; thence South $28^{\circ} 35'$ West, 430.40 feet to a point in fence line and Northerly boundary line of Rancho del Diablo; thence running along said fence and boundary line North $47^{\circ} 49'$ West, 201.53 feet to the point of beginning. Containing 4.96 acres and being a portion of the Northwest quarter of Section 21, Township 2 North, Range 1 West, and this being same property transferred by deed dated December 3, 1927, from Antone Faria, et ux, to Frank J. Dutra.

(2) Portion of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 21, Township 2 North, Range 1 West, Mt. Diablo Base & Meridian, containing 5.00 acres, more or less, described as follows:

Beginning at a point which bears North $2^{\circ} 33'$ West 43.51 feet from a concrete monument in the Easterly line of the Rancho del Diablo, which monument is the most Northerly corner

of parcel described in the Deed of Trust from Joseph Williams, [46] Jr., et ux, to Willard D. Ellis, et al, trustees for the Federal Land Bank of Berkeley, dated January 1, 1934, recorded January 23, 1934, in Book 353, of Official Records, page 312; thence from said point of beginning, North $30^{\circ} 10'$ East 570.68 feet; thence South $46^{\circ} 15'$ East 392.48 feet; thence South $30^{\circ} 10'$ West 570.68 feet; thence North $46^{\circ} 15'$ West 392.48 feet to the point of beginning.

(3) That certain parcel of land conveyed to Joseph S. Williams, Jr., by deed executed by Antone Faria, dated April 21, 1907, recorded April 21, 1911, in Book 162 of Deeds, page 562, described as follows:

Beginning at a station post in the division fence between the lands belonging to the party of the first part in the Southwest $\frac{1}{4}$ of Section 21, Township 2 North, Range 1 West, Mt. Diablo Base & Meridian, and lands of J. S. Williams, Jr., known as the Fernandez Ranch in the Rancho Monte del Diablo; thence North $65\frac{3}{4}^{\circ}$ East 284.4 feet to station; thence South $29\frac{1}{4}^{\circ}$ East to and crossing a creek that runs from near Antone Faria's dwelling 122 feet to station; thence South $54\frac{1}{2}^{\circ}$ West 229.00 feet to station in aforesaid boundary between Antone Faria and J. S. Williams, Jr., thence North $47\frac{1}{2}^{\circ}$ West along said boundary at 112.00 feet crossing said creek, 173.00 feet to the point of beginning. Containing 0.84 acre, more or less.

All of said parcels above described are contiguous to each other and together they aggregate 440.87 acres, more or less.

2. By the complaint filed in this cause, the plaintiff sought to condemn, and on January 15, 1945, the plaintiff did take possession of 272.70 acres, more or less, of said 440.87 acres tract, to wit: That portion described under and as "Parcel 59" in plaintiff's complaint, as amended. This defendant denied that said portion sought to be condemned and so taken, as aforesaid, by the plaintiff, namely, said Parcel 59, does not constitute part of a larger parcel belonging to this defendant, but in truth and in fact, this defendant alleges that said parcel of land sought to be condemned and taken by the plaintiff constitutes a part of the larger parcel belonging to this defendant, all as above stated and described.

3. At the time of the commencement of this action on [47] July 22, 1944, and to and including January 15, 1945, this defendant was the owner in connection with said Parcel 59, of mineral rights set forth in the following instruments:

(a) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of Contra Costa County, at page 488;

(b) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 23;

(c) An instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 672 of Official Records of Contra Costa County, at page 473.

4. Said mineral rights of this defendant were taken from her by plaintiff on January 15, 1945, and at the time of said taking the actual value thereof was the sum of \$75,000.

5. On March 1, 1945, plaintiff and this defendant entered into a written stipulation approved by the above entitled Court whereunder and whereby plaintiff agreed to pay, and did pay this defendant the sum of \$26,780 as full, adequate and just compensation for the taking of said Parcel 59 excepting the said mineral rights of this defendant.

6. The defendant alleges that damages will accrue to the remaining portion of this defendant's land not sought to be condemned by the plaintiff, to wit: the remaining 168.17 acres, more or less, of said tracts of land, in the sum of \$35,875, by reason of its severance from the portion sought to be condemned and taken by the plaintiff, and by reason of the construction of the improvements thereon in the manner proposed by the plaintiff, and by reason of the use of the portion taken in the manner and for the purposes proposed by the plaintiff.

Wherefore, this defendant prays that she be awarded just compensation herein and to that end that this defendant be awarded the actual value of the mineral rights of this defendant in Parcel 59

sought to be condemned and taken by the plaintiff, namely, the sum of \$75,000; and further, that this defendant be awarded all damages that will accrue to the portion of said larger parcel of land belonging to the defendant which is not sought to be condemned by the plaintiff, to wit: the sum of \$35,875; and that this defendant be awarded judgment for interest as provided by law, and for costs of suit herein incurred, and for such other and further relief as to the Court may seem meet and proper in the premises.

/s/ A. J. SCAMPINI,

/s/ WALTER HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for Defendant.

State of California,

County of Contra Costa—ss.

Maria Faria, being first duly sworn, deposes and says: That she is the defendant in the above entitled action; that she has read the foregoing amended answer and knows the contents thereof; that the same is true of her own knowledge except as to those matters therein stated on information and belief, and that as to those matters she believes it to be true.

MARIA FARIA

Her X Mark

Witnesses to mark of Maria Faria:

LEONE N. SMITH,

ELMA M. JACKSON.

Subscribed and sworn to before me this 31st day of December, 1946.

[Seal] N. E. GRAHAM,

Notary Public in and for the County of Contra Costa, State of California.

My commission expires August 10, 1947. [49]

NOTICE OF ASSUMPTION OF BURDEN OF
PROOF AND DEMAND FOR JURY TRIAL

Said defendant assumes the burden of proof, and demands a jury trial on the issue as to the amount of compensation.

/s/ A. J. SCAMPINI,
/s/ WALTER HETTMAN,
/s/ HERBERT CHAMBERLIN,

Attorneys for Defendant.

[Acknowledgment of Receipt of Copy.]

[Endorsed]: Filed Jan. 6, 1947. [50]

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANT
EDWARD FARIA

Now comes the defendant Edward Faria, and answers the complaint herein as follows:

1. On July 22, 1944, on which date the complaint of the plaintiff was filed in this action and

summons issued, this defendant was the owner in fee simple absolute of the following described real property lying and being in the County of Contra Costa, State of California, and more particularly described as follows, to wit:

Beginning at a point which bears North $2^{\circ} 33'$ west, 43.51 feet from a concrete monument in the easterly line of the Rancho del Diablo, which monument is the most northerly corner of the parcel of land described in the deed of trust from Joseph Williams, Jr., et ux to Willard D. Ellis, et al., trustees for the Federal Land Bank of Berkeley, dated January 1, 1934, and recorded January 23, 1934, in Volume 353, of Official Records, at page 312; thence from said point of beginning North $30^{\circ} 10'$ East 570.68 feet; thence South $46^{\circ} 15'$ East 392.48 feet, thence south $30^{\circ} 10'$ West 570.68 feet; thence North $46^{\circ} 15'$ West 392.48 feet to the point of beginning, and containing 5 acres, more or less. Being a portion of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 21, T. 2 N., R. 1 W., M.D.B.&M.

Said parcel of land is designated as "Parcel 58" in plaintiff's complaint as amended and filed herein. By an order of the above entitled Court duly made and entered herein on September 28, 1944, possession of said premises was taken by plaintiff on January 15, 1945.

2. At the time of the commencement of this action on July 22, 1944, and to and including Jan-

uary 15, 1945, this defendant was the owner in connection with said Parcel 58 of mineral rights set forth in the following instruments:

(a) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 18;

(b) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 24;

(c) An instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 674 of Official Records of Contra Costa County, at page 55;

(d) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of Contra Costa County, at page 488;

(e) An instrument dated February 21, 1942, and recorded [52] April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 23;

(f) An instrument dated August 11, 1941, and recorded August 7, 1942, in Volume 672 of Official Records of Contra Costa County, at page 473.

3. Said mineral rights of this defendant were taken from him by plaintiff on January 15, 1945,

and at the time of said taking the actual value thereof was the sum of \$3,500.

4. On March 1, 1945, plaintiff and this defendant entered into a written stipulation approved by the above entitled Court whereunder and whereby plaintiff agreed to pay and did pay this defendant the sum of \$400 as full, adequate and just compensation for the taking of said Parcel 58 excepting the said mineral rights of this defendant.

Wherefore, this defendant prays that he be awarded just compensation herein and to that end that this defendant be awarded the value of the mineral rights of this defendant in said Parcel 58 sought to be condemned and taken by the plaintiff, namely, the sum of \$3,500; and further, that this defendant be awarded judgment for interest as provided by law, and for costs of suit herein incurred, and for such other and further relief as to the Court may seem meet and proper in the premises.

/s/ A. J. SCAMPINI,

/s/ WALTER HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for Defendant.

NOTICE OF ASSUMPTION OF BURDEN OF PROOF AND DEMAND FOR JURY TRIAL

Said defendant assumes the burden of proof, and

demands a jury trial on the issue as to the amount of compensation. [53]

/s/ A. J. SCAMPINI,

/s/ WALTER HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for Defendant.

Received a copy of the foregoing amended answer, notice and demand. January 6, 1947.

M. MITCHELL BOURQUIN,

Special Assistant to the

Attorney General,

Attorney for Plaintiff.

State of California,

County of Contra Costa—ss.

Edward Faria, being first duly sworn, deposes and says:

That he is the defendant in the above entitled action; that he has read the foregoing amended answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein, stated on information and belief, and that as to those matters, he believes it to be true.

EDWARD FARIA.

Subscribed and sworn to before me this 31st day of December, 1946.

[Seal]

N. E. GRAHAM,

Notary Public in and for the County of Contra Costa, State of California.

My commission expires August 10, 1947.

[Endorsed]: Filed Jan. 6, 1947. [54]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 Acres of Land in the County of Contra Costa,
et al.,

Defendant.

VERDICT

We, the Jury, find the market value as of July 24, 1944, of the royalty interest of defendant Edward Faria under the leases on parcel 58, to be the sum of \$50.00.

WM. H. OWEN,
Foreman.

[Endorsed]: Filed Feb. 7, 1947. [55]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 Acres of Land in the County of Contra Costa,
et al.,

Defendant.

VERDICT

We, the Jury, find the market value as of July 24, 1944, of the leasehold estate of the defendant Joseph Faria, Jr., in parcels 59 and 64, to be the sum of \$517.00.

We further find the severance damage to the leasehold interest of the defendant Joseph Faria, Jr., not taken by the United States of America to be the sum of \$ None.

WM. H. OWEN,

Foreman.

[Endorsed]: Filed Feb. 7, 1947. [56]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 Acres of Land in the County of Contra Costa,
et al.,

Defendant.

VERDICT

We, the Jury, find the market value as of January 15, 1945, of the leasehold estate of the defendant Cal-Bay Corporation in parcels 57, 58 and 59, to be the sum of \$926.00.

We further find the severance damage to the leasehold estate of the defendant Cal-Bay Corporation not taken by the United States of America to be the sum of \$ None.

WM. H. OWEN,
Foreman.

[Endorsed]: Filed Feb. 7, 1947. [57]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 Acres of Land in the County of Contra Costa,
et al.,

Defendant.

VERDICT

We, the Jury, find the market value as of July 24, 1944, of the royalty interest of defendant Maria Faria under the leases on parcel 59, to be the sum of \$2312.00.

We further find the severance damage to the royalty interest of the defendant Maria Faria not taken by the United States of America to be the sum of \$ None.

WM. H. OWEN,
Foreman.

[Endorsed]: Filed Feb. 7, 1947. [58]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 Acres of Land in the County of Contra Costa,
et al.,

Defendant.

VERDICT

We, the Jury, find the market value as of July 24, 1944, of the royalty interest of defendant Mae E. Roche under the leases on parcel 57, to be the sum of \$60.00.

WM. H. OWEN,
Foreman.

[Endorsed]: Filed Feb. 7, 1947. [59]

In the District Court of the United States, in and
for the Northern District of California, South-
ern Division

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 Acres of Land, more or less, situated in the
County of Contra Costa, State of California,
W. J. VON HECKEREN, et al.,

Defendants.

REQUESTED INSTRUCTIONS FOR
DEFENDANTS

Now come the defendants, Cal-Bay Corporation, Joseph Faria, Jr., Maria Faria, Edward Faria and Mae E. Roche, and hereby request the Court to instruct the jury in the above-entitled cause by giving to the jury the following appended instructions submitted to the Court on this 24th day of January, 1947, and prior to the taking of testimony in this action and in compliance with Rule 15 of the Rules and Practice [60] of the United States District Court, in and for the Northern District of California.

At the conclusion of the evidence or during the trial of this cause, the defendants reserve the right and respectfully request the Court for the right and privilege to propose additional instructions as

they deem necessary, and which they were unable to prepare in advance of the trial, or to anticipate with reference to the introduction of certain evidence.

A. J. SCAMPINI,
WALTER HETTMAN,
HERBERT CHAMBERLIN,

Attorneys for Defendants.

Defendant's Instruction No. 1

Ladies and Gentlemen of the Jury:

It becomes my duty as Judge to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you. On the other hand, it is your exclusive province to determine the facts in the case, and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law stated to you.

(BAJI #1)

Given

Refused [62]

Defendants' Instruction No. 2

This is a proceeding in eminent domain; that is, a proceeding whereby the United States of America

seeks to condemn and appropriate to public use certain private property.

Given

Refused [63]

Defendants' Instruction No. 3

The plaintiff in this action is the United States of America. The terms "Plaintiff," "United States of America," "United States" and "Government," as used in these instructions, will mean one and the same party.

Given

Refused [64]

Defendants' Instruction No. 4

There are five defendants in the action, namely, Cal-Bay Corporation, Joseph Faria, Jr., Maria Faria, Edward Faria, and Mae E. Roche. Each seeks to recover compensation for property allegedly condemned and appropriated by the plaintiff in this action. Each is entitled to a separate verdict at your hands.

Given

Refused [65]

Defendants' Instruction No. 5

In a proceeding in eminent domain neither the court nor the defendants have any power or discretion to prevent the property from being taken.

When the action is filed the conclusion of the executive or administrative branch of the Government to the effect that it is necessary for the property to be taken is final and conclusive; they are the sole judges of such necessity.

(Oakland v. United States, 9 Cir., 124 F. (2d) 759.)

Given

Refused [66]

Defendants' Instruction No. 6

The fact that the plaintiff in this action is the United States of America should not influence you in any way in arriving at your verdict. You should regard this case as though the parties before you were two individuals, each of whom is entitled to receive equal justice at your hands.

(E. C. Shevlin Co. v. United States, 9 Cir., 146 F. (2d) 613, 615.)

Given

Refused [67]

Defendants' Instruction No. 7

The action as filed involved 5430 acres, more or less, situated in the County of Contra Costa, and comprised a number of parcels owned by separate individuals. For convenience in reference the parcels were separately numbered.

Given

Refused [68]

Defendants' Instruction No. 8

In connection with parcel numbered 57, the defendant, Cal-Bay Corporation, seeks compensation in the sum of \$3,850.00 for the taking of its leasehold interest.

In connection with parcel numbered 58, the said defendant seeks compensation in the sum of \$3,900.00 for the taking of its leasehold interest; and in connection with parcel numbered 59, the said defendant seeks compensation in the sum of \$461,000.00 for the taking of its leasehold interest; to-wit, a total of \$468,750.00.

The said defendant, Cal-Bay Corporation, also seeks compensation in the sum of \$150,000.00 for severance damages.

Given

Refused [69]

Defendants' Instruction No. 9

In connection with parcel numbered 3A, the defendant, Joseph Faria, Jr., seeks compensation in the sum of \$20,975.00 for the taking of his leasehold interest.

In connection with parcel numbered 59, the said defendant seeks compensation in the sum of \$15,575.00 for the taking of his leasehold interest; and in connection with parcel numbered 64, the said defendant seeks compensation in the sum of \$175.00

for the taking of his leasehold interest; to-wit, the total sum of \$38,725.00.

The said defendant, Joseph Faria, Jr., also seeks compensation in the sum of \$31,850.00 for severance damages.

Given

Refused [70]

Defendants' Instruction No. 10

In connection with parcel numbered 59, the defendant, Maria Faria, seeks compensation in the sum of \$75,000 for the taking of mineral rights set forth in the following instruments:

- (a) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of Contra Costa County, at page 488;
- (b) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 23;
- (c) An instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 672 of Official Records of Contra Costa County, at page 473.

The said defendant, Maria Faria, also seeks compensation in the sum of \$35,875 for severance damages.

Given

Refused [71]

Defendants' Instruction No. 11

In connection with parcel numbered 58, the defendant, Edward Faria, seeks compensation in the sum of \$3,500 for the taking of mineral rights set forth in the following instruments:

- (a) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 18;
- (b) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 24;
- (c) An instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 674 of Official Records of Contra Costa County, at page 55;
- (d) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of Contra Costa County, at page 488;
- (e) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 23;
- (f) An instrument dated August 11, 1941, and recorded August 7, 1942, in Volume 672 of Official Records of Contra Costa County, at page 473.

Given

Refused [72]

Defendants' Instruction No. 12

In connection with parcel numbered 57, the defendant, Mae E. Roche, seeks compensation in the sum of \$3,500 for the taking of mineral rights set forth in the following instruments:

- (a) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 643 of Official Records of said Contra Costa County, at page 10;
- (b) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 21;
- (c) An instrument dated April 28, 1942, and recorded August 17, 1942, in Volume 628 of Official Records of said Contra Costa County, at page 278;
- (d) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of said Contra Costa County, at page 488;
- (e) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 23;
- (f) An instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 672 of

Official Records of said Contra Costa County,
at page 473.

Given

Refused [73]

Defendants' Instruction No. 13

The Fifth Amendment of the Constitution of the United States provides that private property shall not be taken for public use without just compensation. Just compensation means the full and perfect equivalent in money of the property taken. The owner is to be put in as good condition pecuniarily as he would have occupied if his property had not been taken.

(United States v. Miller, 317 U. S. 369, 373,
63 S. Ct. 276, 279, 280, 87 L. Ed. 336.)

Given

Refused [74]

Defendants' Instruction No. 14

Just compensation includes all elements of value that in here in the property, but it does not exceed market value fairly determined. The sum required to be paid the owner does not depend upon the uses to which he has devoted his property but is to be arrived at upon just consideration of all the uses for which it is suitable. The highest and most profitable use for which it is adaptable and needed, or likely to be needed in the reasonably near future, is to be considered not necessarily as the measure

of market value, but to the full extent that the prospect or demand for such use affects the market value while the property is privately held.

(*Olson v. United States*, 292 U. S. 246, 255, 54 S. Ct. 704, 708-9, 78 L. Ed. 1236.)

Given

Refused [75]

Defendants' Instruction No. 15

Just compensation means market value fairly determined.

(*United States v. Powelson*, 319 U. S. 266, 275, 63 S. Ct. 1047, 1052, 87 L. Ed. 1390.)

Given

Refused [76]

Defendants' Instruction No. 16

Market value is what a willing buyer would pay in cash to a willing seller.

(*United States v. Miller*, 317 U. S. 369, 375, 63 S. Ct. 276, 280, 87 L. Ed. 336.)

Given

Refused [77]

Defendants' Instruction No. 17

Where, for any reason, property has no market, resort must be had to other data to ascertain its value.

(United States v. Miller, 317 U. S. 369, 374,
63 S. Ct. 276, 280, 87 L. Ed. 336.)

Given

Refused [78]

Defendants' Instruction No. 20

If only a part of an owner's property is taken and the part not taken is left in such shape or condition to be in itself of less value than before, the owner is entitled to additional damages on that account. Such incidental or severance damage is a part of the whole damage suffered by the owner upon the taking. The burden of proving the damage suffered is upon such owner.

(United States v. Acres of Land, D.C.-Cal.
41, F. Supp. 30, 32.)

Given

Refused [79]

Defendants' Instruction No. 21

In civil actions, and a proceeding in eminent domain is a civil action, the party who asserts the affirmative of an issue must carry the burden of proving it. In other words, the "burden of proof" as to that issue is on that party. This means that if no evidence were given on either side of such issue, your finding as to it would have to be against that party. When the evidence is contradictory, the decision must be made according to the preponderance of evidence, by which is meant such evidence

as when weighed with that opposed to it has more convincing force, and from which it results that the greater probability of truth lies therein. Should the conflicting evidence be evenly balanced in your minds, so that you are unable to say that the evidence on either side of the issue preponderates, then your finding must be against the party carrying the burden of proof, namely, the one who asserts the affirmative of the issue.

(BAJI #21—Adapted)

Given

Refused [80]

Defendants' Instruction No. 22

While it is incumbent upon one who asserts the affirmative of an issue, thus having the burden of proof, to prove his allegations by a preponderance of the evidence, this rule does not require demonstration; that is, such degree of proof as, excluding all possibility of error, produces absolute certainty, because such proof is rarely possible.

In a civil action such as the one we are now trying, it is proper to find that a party has succeeded in carrying his burden of proof on an issue of fact, if the evidence favoring his side of the question is more convincing than that tending to support the contrary side, and if it causes the jurors to believe

that on that issue, the probability of truth favors that party.

SAID [31-50]

Given

Tested [31]

Defendants' Instruction No. 22

In this case the burden of proving the value of the property taken is on the defendants.

(United States v. Powell, 339 U. S. 266,

35-63 S. Ct. 1045, 1052 S. Ct. Ed. 1290)

Given

Tested [32]

Defendants' Instruction No. 24

You are instructed that for the purposes of this case the date of taking shall be accepted by you as January 15, 1945.

Given

Tested [33]

Defendants' Instruction No. 25

You are not bound to decide in conformity with the testimony of a number of witnesses which does not produce conviction in your mind, as against the declaration of a lesser number or a presumption, or other evidence, which appeals to your mind with more convincing force. This rule of law does not mean that you are at liberty to disregard the testi-

many of the greater number of witnesses merely from caprice or prejudice, or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence.

(BAJI =24)

Given

Refused [84]

Defendants' Instruction No. 26

In judging the credibility of witnesses, you shall have in mind the law that a witness is presumed to speak the truth. This presumption, however, may be overcome by contradictory evidence, by the manner in which the witness testified, by the character of his testimony, or by evidence that pertains to his motives.

(BAJI =26)

Given

Refused [85]

Defendants' Instruction No. 27

A witness false in one part of his or her testimony is to be distrusted in others; that is to say, you may reject the whole testimony of a witness who wilfully has testified falsely as to a material

point, unless from all the evidence you shall believe that the probability of truth favors his or her testimony in other particulars.

(BAJI #27)

Given

Refused [86]

Defendants' Instruction No. 28

The rules of evidence ordinarily do not permit the opinion of a witness to be received in evidence. An exception to this rule exists in the case of expert witnesses. A person who by education, study and experience has become an expert in any art, science or profession, and who is called as a witness, may give his opinion as to any such matter in which he is versed and which is material to the case. You should consider such expert opinion and should weigh the reasons, if any, given for it.

(BAJI #33)

Given

Refused [87]

Defendants' Instruction No. 29

You must resolve any conflict that may exist in the testimony of expert witnesses. To that end, you must weigh one expert's opinion against that of another, the reasons given by one against those of another, and the relative credibility and knowledge of the experts who have testified. Thereupon, you

shall find in favor of that expert testimony which, in your opinion, is entitled to the greater weight.

(BAJI #33-A—Adapted)

Given

Refused [88]

Defendants' Instruction No. 30

At times throughout the trial the court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings, and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the court does not determine what weight should be given such evidence, nor does it pass on the credibility of the witness. As to any offer of evidence that has been rejected by the court, you, of course, must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been, or as to the reason for the objection.

(BAJI #3)

Given

Refused [89]

Defendants' Instruction No. 31

If during this trial I have said or done anything

which has suggested to you that I am inclined to favor the claims or position of either party, you will not suffer yourself to be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are, or are not, worthy of belief; what facts are, or are not, established; or what inferences should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

(BAJI #5)

Given

Refused [90]

Defendants' Instruction No. 32

If in these instructions any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole, and to regard each in the light of all the others.

(BAJI #2)

Given

Refused [91]

Defendants' Instruction No. 33

It is your duty as jurors to consult with one another, and to deliberate, with a view to reaching an agreement, if you can do so without violence to your individual judgment. You must each decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you, by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict, or solely because of the opinion of the other jurors.

(BAJI #)

Given

Refused [92]

Defendants' Instruction No. 34

If you find a verdict in favor of the defendant, Cal-Bay Corporation, you will award said defendant just compensation for the taking of its leasehold interest in parcels numbered 57, 58 and 59; separately assessing the same; and also just compensation for severance damages.

Given

Refused [93]

Defendants' Instruction No. 35

If you find a verdict in favor of the defendant, Joseph Faria, Jr., you will award said defendant just compensation for the taking of his leasehold interest in parcels numbered 3A, 59 and 64, separately assessing the same, and also just compensation for severance damages.

Given

Refused [94]

Defendants' Instruction No. 36

If you find a verdict in favor of the defendant, Maria Faria, you will award her just compensation for the taking of her mineral rights in parcel numbered 59, and also just compensation for severance damages.

Given

Refused [95]

Defendants' Instruction No. 37

If you find a verdict in favor of the defendant, Edward Faria, you will award him just compensation for the taking of his mineral rights in parcel numbered 58.

Given

Refused [96]

Defendants' Instruction No. 38

If you find a verdict in favor of the defendant,

Mae E. Roche, you will award her just compensation for the taking of her mineral rights in parcel numbered 57.

Given

Refused [97]

Defendants' Instruction No. 39

In any verdict or verdicts you may render for the defendants, or any of them, you shall add the words "together with interest at the rate of six per cent (6%) per annum from January 15, 1945."

(*Jacobs v. United States*, 290 U. S. 13, 16, 54 S. Ct. 26, 28, 78 L. Ed. 142.)

Given

Refused [98]

Defendants' Instruction No. 7 (Reframed)

This action by the United States of America is in eminent domain, by which the Government took possession and title to certain lands in Contra Costa County near Port Chicago and has proceeded to construct thereon a naval ammunition depot. The lands and mineral rights taken by the Government comprise a number of different interests held or owned by the various defendants.

These interests are those of defendant Cal-Bay Corporation which held certain leases for the development of the gas and oil rights; certain leases held by defendant Joseph Faria, Jr., for the development of oil and gas rights, and then also the

royalty interests in said leases retained by other defendants who were the owners of the lands. Finally, also there are the interests and claims of both the lessors and lessees of said gas and oil rights in those lands of which a portion only was taken by the Government and the balance was therefore damaged by such taking. Such damage is known as "severance damage."

It will be your duty, as jurors, to determine the fair market value of the property at the time of the taking of the leases for the development of said gas and oil rights, and also the fair market value of the royalties reserved to the lessors, and then the damage known as "severance damages" in the taking.

These parcels of land are set forth in the complaint and exemplified on the maps in evidence as Parcels 57, 58, 59 and 64.

(Section 1248, C.C.P.)

Given

Refused [99]

Defendants' Instruction No. 8 (Reframed)

The claims for damages by defendant Cal-Bay Corporation as lessee in certain gas and oil leases, providing for 87½ per cent of the production to be retained by defendant Cal-Bay Corporation, may be stated as follows:

(1) Lease dated August 11, 1941, for 20 years from Mary Faria, lessor, for Parcel 59, comprising

367.36 acres. The Government by these proceedings took 208.83 acres, leaving 158.53 acres not taken. Defendant Cal-Bay Corporation claims damages for the loss or fair market value of the gas and oil rights under said lease for the acreage taken by the Government on January 15, 1945, in the amount of \$461,000.

(2) Lease dated August 11, 1941, for 20 years from Edward Faria, lessor, for Parcel 58, comprising 5 acres, all of which was taken by the Government in these proceedings. Defendant Cal-Bay Corporation claims damages for the loss or fair market value of the gas and oil rights under said lease for the acreage taken by the Government on January 15, 1945, in the amount of \$3,900.

(3) Lease dated August 11, 1941, for 20 years from Mae E. Dutra Roche, lessor, for Parcel 57, comprising 4.96 acres, all of which was taken by the Government in these proceedings. Defendant Cal-Bay Corporation claims damages for the loss or fair market value of the gas and oil rights under said lease for the acreage taken by the Government on July 24, 1944, in the amount of \$3,850.

(4) Lease dated March 3, 1942, for 20 years from M. V. Alvarnaz, lessor, being a part of Parcel 59, comprising 310 acres. Said property adjoins the property of Mary Faria at the north. No part of said 310 acres was [100] taken by the Government, but severance damages are claimed as hereinafter stated.

(5) Defendant Cal-Bay Corporation claims damages known as severance damages to the remaining lease interests in the 158.53 acres of Mary Faria not taken by the Government and in the 310 acres of M. V. Alvarnaz not taken by reason of being severed from the part taken by the Government in the sum of \$150,000.

(6) Total damages claimed by defendant Cal-Bay Corporation is the total of said damages for the loss of said gas and oil rights and said severance damages, or a total of \$618,750.

(Sec. 1248 C.C.P.; *City of Los Angeles v. Pomeroy*, 124 Cal. 597; *Spring Valley Water Co. v. Drinkhouse*, 92 Cal. 528.)

Given

Refused [101]

Defendants' Instruction No. 9 (Reframed)

The claim for damages by defendant Joseph Faria, Jr., as lessee in certain gas and oil leases, providing for 87½ per cent of the production reserved to him may be stated as follows:

(1) Lease dated August 11, 1941, for 20 years from Mary Faria, lessor, for part of Parcel 59, comprising 73.51 acres. The Government by these proceedings took 63.91 acres, leaving 9.6 acres not taken. Defendant Joseph Faria, Jr., claims damages for the loss or fair market value of the gas and oil rights under said lease for the acreage taken by

the Government on July 24, 1944, in the amount of \$17,575.

(2) Lease dated December 23, 1941, for 20 years, from Geraldine Faria, lessor, for Parcel 64, comprising 228.55 acres, which lands adjoin the property of Mary Faria at the north. The Government by these proceedings took 0.65 acres, leaving 277.90 acres not taken. Defendant Joseph Faria, Jr., claims damages for the loss or fair market value of the gas and oil rights under said lease for the acreage taken by the Government on July 24, 1944, in the amount of \$175.

(3) Defendant Joseph Faria, Jr., claims damages known as severance damages to the remaining lease interests in the 9.6 acres of Mary Faria not taken by the Government and in the 227.90 acres of Geraldine Faria not taken by reason of being severed from the part taken by the Government in the sum of \$31,850.

(4) Total damages claimed by defendant Joseph Faria, Jr., is the total of said damages for the loss of [102] said gas and oil rights and said severance damages, or a total of \$49,600.

(Sec. 1248 C.C.P.; *City of Los Angeles v. Pomeroy*, 124 Cal. 597; *Spring Valley Water Co. v. Drinkhouse*, 92 Cal. 528.)

Given

Refused [103]

Defendants' Instruction No. 10 (Reframed)

The claim for damages by defendant Mary Faria, as lessor, for loss of royalties on certain gas and oil leases, providnig for 12½ per cent of the production reserved to her may be stated as follows:

(1) Lease dated August 11, 1941, for 20 years to Joseph Faria, Jr., in Parcel 59 comprising 440.87 acres, a portion of said lease having been assigned to defendant Cal-Bay Corporation comprising 367.36 acres, and leaving remaining to Joseph Faria, Jr., 73.51 acres under said lease. Of the 440.87 acres owned by Mary Faria and embraced within her said lease, the Government took 208.83 acres from the lease held by defendant Cal-Bay Corporation and 63.91 acres held by defendant Joseph Faria, Jr. Defendant Mary Faria claims damages for the loss or fair market value of royalties in the gas and oil rights under said lease in the 272.74 acres taken by the Government from defendant Cal-Bay Corporation, lessee, and defendant Joseph Faria, Jr., lessee, in the sum of \$75,000.

(2) Defendant Mary Faria claims damages known as severance damages to the remaining royalty interests in the 168.13 acres not taken by the Government by reason of being severed from the part taken by the Government in the sum of \$35,875.

(3) Total damages claimed by defendant Mary Faria is the total of said damages for the loss of royalties on certain oil and gas leases and said severance damages, or a total of \$110,875.

(Sec. 1248 C.C.P.; City of Los Angeles v. Pomeroy, 124 Cal. 597; Spring Valley Water Co. v. Drinkhouse, 92 Cal. 528.)

Given

Refused [104]

Defendants' Instruction No. 11 (Reframed)

The claim for damages of Edward Faria, as lessor, for loss of royalties on certain gas and oil leases, providing for 12½ per cent of the production reserved to him may be stated as follows:

(1) Lease dated August 11, 1941, for 20 years to Cal-Bay Corporation, lessee, in Parcel 58 comprising 5 acres. The Government took all of said 5 acres in these proceedings. Edward Faria claimed damages for the loss or fair market value of his royalties for gas and oil rights under said lease in the sum of \$3,500.

(Sec. 1248 C.C.P.; City of Los Angeles v. Pomeroy, 124 Cal. 597; Spring Valley Water Co. v. Drinkhouse, 92 Cal. 528.)

Given

Refused [105]

Defendants' Instruction No. 12 (Reframed)

The claim for damages of Mae E. Dutra Roche, as lessor, for loss of royalties on certain gas and oil leases, providing for 12½ per cent of the production reserved to her may be stated as follows:

(1) Lease dated August 11, 1941, for 20 years to Cal-Bay Corporation, lessee, in Parcel 57 comprising 4.96 acres of land. The Government took all of said 4.96 acres in these proceedings. Mae E. Dutra Roche claims damages for loss or fair market value of royalties on said gas and oil rights under said lease in the sum of \$3,500.

(Sec. 1248 C.C.P.; City of Los Angeles v. Pomeroy, 124 Cal. 597; Spring Valley Water Co. v. Drinkhouse, 92 Cal. 528.)

Given

Refused [106]

Defendants' Instruction No. 40

This action concerns the value of the gas and oil rights and the leases given for such development on the lands taken by the Government. Gas and oil leases are recognized by law as being property having a market value even if such leases are in undeveloped territory. Where gas and oil rights are concerned a reasonable probability of successful development is sufficient to make such leaseholds of great value. Where there is reasonable possibility of production in paying quantities gas and oil leases are common subject of barter and sale and, therefore, have a definite ascertainable market value.

There is a definite market value even where the prospects of successful development are too specu-

lative to be reasonably probable. If the uncertainties are such that the mineral interests in the condemned lands are bought and sold at arms-length transactions for valuable considerations, they have a market price translated into a fair market value for condemnation purposes.

(Eagle Lake Improvement Co. v. United States (5 C.C.A.), 141 Fed. (2d) 562 at 564.)

Given

Refused [107]

Defendants' Instruction No. 41

In this case defendants base their value of the gas and oil rights taken upon the fair market value determined by the opinion of certain witnesses who have information concerning said properties. The opinions of such witnesses as to market value of said gas and oil rights need not be based upon the sales of the same or similar rights. It is sufficient if after witness has testified that he knows the property and its market value he may be then called upon to state what his opinion is as to the fair market value.

(Montana Railway Company v. Warren, 137 U. S. 330, 34 L. Ed. 681.)

Given

Refused [108]

Defendants' Instruction No. 19

You are instructed that mineral rights are prop-

erty within the meaning of the Fifth Amendment of the Constitution, and that for the taking of mineral rights by the Government the owner thereof is entitled to just compensation.

(United States v. Shoshone Tribe, 304 U. S. 111, 58 S. Ct. 794, 82 L. Ed. 1213.)

Given ✓

Refused [109]

Defendants' Instruction No. 18

You are instructed that an oil and gas lease is property within the meaning of the Fifth Amendment of the Constitution, and that for the taking of such leasehold interest by the Government the owner thereof is entitled to just compensation.

(Certain Acres of Land v. United States, 5 Cir. 1945, 152 F. (2d) 566, 567, 568.)

Given ✓

Refused [110]

Defendants' Instruction No. 44

If you find and believe from the entire testimony that any of the witnesses as to value have magnified or exaggerated the value, or on the other hand have minimized or diminished the value on account of his or her interest in the action or in the property, or his or her prejudice, lack of candor or want of knowledge or lack of familiarity with the property or from lack of experience or lack of trust-

worthiness, or for any other reason, then it is your duty to reject the evidence of such witness or witnesses insofar as you believe the same to have been exaggerated or minimized. You must arrive at your verdict from what you find to be a preponderance of the credible evidence as to the amounts of money the defendants are entitled to receive as just compensation for the loss to him or her or it, occasioned by the taking of the property involved in this action on the dates specified.

Given

Refused [111]

Defendants' Instruction No. 43

The owner of mineral rights or oil and gas leases taken by the Government is entitled to just compensation therefor if they have a fair market value at the time of taking although they may be in undeveloped territory and there is only a reasonable possibility of successful development.

Given

Refused [112]

Defendants' Instruction No. 42

The owner of any mineral rights or oil and gas leases taken by the government and having a fair market value at the time of taking, is entitled to just compensation therefor.

Given

Refused [113]

Defendants' Instruction No. 45

A judge of this court, presiding in the trial of an action, is authorized, within proper bounds, to comment to the jury on the credibility of any witness and on any other phase of evidence.

I would caution you that it is your right and duty to exercise the same independence of judgment in weighing the judge's comment on the evidence as you are entitled to exercise in weighing the testimony of the witnesses and the arguments of counsel.

You will keep in mind that you are the exclusive judges of the credibility of the witnesses and of all questions of fact submitted to you. Such authority as the trial judge has to express his personal though on any of these matters is confined to the sole purpose of aiding you in arriving at a verdict, and may not be used, and is not used in this case, to impose his will upon you or to compel a verdict.

(BAJI #6)

Given

Refused

[Endorsed]: Filed Feb. 10, 1947. [114]

In the District Court of the United States, in and
for the Northern District of California,
Southern Division

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 acres of land, more or less, situated in the
County of Contra Costa, State of California,
J. W. Von Heckeren, Cal-Bay Corporation,
Maria Faria, also known as Mary Faria,
Joseph Faria, Jr., Edward Faria and Mae E.
Roche, also known as Mae Dutra Roche, et al.

Defendants.

JUDGMENT AS TO OIL AND GAS RIGHTS
in PARCELS 3A, 57, 58, 59 AND 64.

The above entitled action came on for trial
before the above entitled Court, the Honorable
Louis E. Goodman presiding, as to Parcels 3A,
57, 58, 59 and 64 on the 21st day of January, 1947,
plaintiff being represented by its Attorney, M.
Mitchell Bourquin; and defendants Maria Faria,
also known as Mary Faria, Edward Faria, Joseph
Faria, Jr., Mae E. Roche, also known as Mae
Dutra Roche, and Cal-Bay Corporation, being
represented by A. J. Scampini, Walter Hettman
and Herbert Chamberlin, their Attorneys; and a
Jury having been regularly impanelled and sworn

for the sole purpose of determining the fair market value of the oil and gas rights in the property taken by this action and subject of this trial, and any damages resulting therefrom, and evidence, both oral and documentary, having been introduced at the trial, and the Jury having been fully instructed, [115] returned its verdict on the 7th day of February, 1947, finding the fair market value of Cal-Bay Corporation's interest in Parcel 59, on January 15, 1945, to be eight hundred thirty-six and no/100 dollars (\$836.00); finding the fair market value of Cal-Bay Corporation's interest in Parcel 58, on January 15, 1945, to be thirty and no/100 dollars (\$30.00); finding the fair market value of Cal-Bay Corporation's interest in Parcel 57, on July 24, 1944, to be sixty and no/100 dollars (\$60.00); finding that no severance damages occurred by reason of the taking of Cal-Bay Corporation's interest in Parcels 57, 58 and 59; finding the fair market value of Joseph Faria, Jr.'s interest in Parcel 59, on July 24, 1944, to be five hundred twelve and no/100 dollars (\$512.00); finding the fair market value of Joseph Faria, Jr.'s interest in Parcel 64, on July 24, 1944, to be five and no/100 dollars (\$5.00); finding that no severance damage occurred to other property under lease to Joseph Faria, Jr. by reason of taking of Joseph Faria, Jr.'s interest in Parcels 59 and 64; finding the fair market value of Maria Faria's interest in Parcel 59, on July 24, 1944, to be two thousand three hundred twelve and no/100 dollars (\$2,312.00): finding no severance damage occurred to other

property owned by said Maria Faria by reason of the taking of Maria Faria's interest in Parcel 59; finding the fair market value of Edward Faria's interest in Parcel 58, on July 24, 1944, to be fifty and no/100 dollars (\$50.00); and finding the fair market value of Mae E. Roche's interest in Parcel 59, on July 24, 1944, to be sixty and no/100 dollars (\$60.00), and the Court, being fully informed, finds:

I.

That the Complaint in this action was filed on July 22, 1944, that the plaintiff, through the United States Navy, did on the 24th day of July, 1944, enter into the exclusive possession of Parcels 57 and 64 and thereafter on January 15, 1945, did enter into the exclusive possession of Parcels 58 and 59, and ever since has been, and now is, in the exclusive possession and control of said parcels; that plaintiff and defendant Mae E. Roche, also known as Mae Dutra Roche, did heretofore enter into a Stipulation filed herein on March 12, 1945, pursuant to which said defendant Mae E. Roche, also known as Mae Dutra Roche, was paid the sum of fifteen thousand and no/100 dollars (\$15,000.00), as full, [116] adequate and just compensation for the taking of said Parcel 57, except her mineral rights subject of this Judgment: that plaintiff and defendant Edward Faria did heretofore enter into a Stipulation filed herein on March 8, 1945, pursuant to which said defendant Edward Faria was paid the sum of four hun-

dred and no/100 dollars (\$400.00), as full, adequate and just compensation for the taking of said Parcel 58, except his mineral rights subject of this Judgment; that plaintiff and defendant Maria Faria, also known as Mary Faria, did heretofore enter into a Stipulation filed herein on March 12, 1945, pursuant to which said defendant Maria Faria, also known as Mary Faria, was paid the sum of twenty-six thousand nine hundred fifty and no/100 (\$26,950.00), as full, adequate and just compensation for the taking of said Parcel 59, except her mineral rights subject of this Judgment, and, except as noted, no sums have been paid to said defendants by the plaintiff for the taking of the property as aforesaid.

II.

That the use for which the hereinafter described property is taken and condemned by the plaintiff is one authorized by law, and the said property and the taking thereof is necessary and suited to said use.

III.

That all parties interested directly or indirectly in the above mentioned parcels have been personally served with process or have appeared in said action; that said parcels, together with all claimants and parties interested therein, are within the jurisdiction of this Court, which has power and authority to enter this Final Judgment.

IV.

That the estate and interest taken, and subject of this Judgment, in Parcel 57 are those certain mineral rights provided by certain instruments more particularly described in Paragraph II of the Stipulation heretofore entered into with Mae E. Roche, also known as Mae Dutra Roche, and plaintiff as to Parcel 57 and filed herein on March 12, 1945; that the estate and interest taken, and subject of this Judgment, in Parcel 58 are those certain mineral rights provided by certain instruments more particularly described in Paragraph II of the Stipulation heretofore entered into with Edward Faria and plaintiff as to Parcel 58 [117] and filed herein on March 8, 1945; that the estate and interest taken, and subject of this Judgment, in Parcel 59 are those certain mineral rights provided by certain instruments more particularly described in Paragraph II of the Stipulation heretofore entered into with Maria Faria, also known as Mary Faria, and plaintiff as to Parcel 59 and filed herein on March 12, 1945; and that the estate and interest taken, and subject of this Judgment, in Parcel 64 are those certain mineral rights provided by certain instruments more particularly described under Paragraph (c) of Paragraph II, at page 5 of the Answer of defendant Joseph Faria, Jr. filed on or about January 16, 1946.

V.

That the fair market value on July 24, 1944 of the estate and interest taken in Parcel 57, and sub-

ject of this Judgment, was the sum of one hundred twenty and no/100 dollars (\$120.00), of which sum the fair market value on said date of the interest of Cal-Bay Corporation therein was sixty and no/100 dollars (\$60.00), and of the interest of Mae E. Roche, also known as Mae Dutra Roche, therein was sixty and no/100 dollars (\$60.00); that the fair market value on July 24, 1944, and on January 15, 1945, of the estate and interest taken in Parcel 58, and subject of this Judgment, was the sum of eighty and no/100 dollars (\$80.00), of which sum the fair market value on said dates of the interest of Cal-Bay Corporation therein was thirty and no/100 dollars (\$30.00), and of the interest of Edward Faria therein was fifty and no/100 dollars (\$50.00); that the fair market value on July 24, 1944, and on January 15, 1945, of the estate and interest taken in Parcel 59, and subject of this Judgment, was the sum of three thousand six hundred sixty and no/100 dollars (\$3,660.00), of which sum the fair market value on said dates of the interest of Cal-Bay Corporation was eight hundred thirty-six and no/100 dollars (\$836.00), the interest of Joseph Faria, Jr. therein was five hundred twelve and no/100 dollars (\$512.00), and the interest of Maria Faria, also known as Mary Faria, therein was two thousand three hundred twelve and no/100 dollars (\$2,312.00); that the fair market value on July 24, 1944, of the interest of Joseph Faria, Jr. in and to the estate and interest taken in Parcel 64, and subject of this Judgment, was the sum of five and no/100 dollars (\$5.00). [118]

VI.

That at the time of and immediately prior to the filing of the Complaint and the entry into possession by plaintiff, the defendant Joseph Faria, Jr. was not the owner of any interest in Parcel 3A, as described in the Complaint and Order for Immediate Possession, and said defendant Joseph Faria, Jr. was not the owner of any interest in the property described in the Answer of defendant Joseph Faria, Jr. under Paragraph (a) of Paragraph II thereof on pages 2, 3, and 4, filed herein on or about January 16, 1946; that at the time of and immediately prior to the date of entry into possession by plaintiff, the defendant Mae E. Roche, also known as Mae Dutra Roche, was the owner of a certain interest and the Cal-Bay Corporation was the owner of a certain interest in the mineral rights of Parcel 57, referred to in Paragraph IV hereof; that at the time of and immediately prior to the date of entry into possession by plaintiff, the defendant Edward Faria was the owner of a certain interest and the Cal-Bay Corporation was the owner of a certain interest in the mineral rights of Parcel 58, referred to in Paragraph IV hereof; that at the time of and immediately prior to the date of entry into possession by plaintiff, the defendant Maria Faria, also known as Mary Faria, was the owner of a certain interest as to all of

Parcel 59, the Cal-Bay Corporation was the owner of a certain interest as to a portion of Parcel 59, and Joseph Faria, Jr. was the owner of a certain interest as to a portion of Parcel 59, in the mineral rights referred to in Paragraph IV hereof; that at the time of and immediately prior to the date of entry into possession by plaintiff, the defendant Joseph Faria, Jr. was the owner of a certain interest as to Parcel 64 in the mineral rights referred to in Paragraph IV hereof; that the defendant Cal-Bay Corporation was at all times mentioned herein the owner of a certain interest in and to certain lands contiguous to but not taken by this proceeding, which interest and lands are more particularly described in Paragraphs 1 and 2 of the Amended Answer of defendant Cal-Bay Corporation, filed herein on or about January 6, 1947, excepting therefrom the land described as Parcels 57, 58 and 59 in Paragraph VII hereof; that the defendant Joseph Faria, Jr. was at all times mentioned herein the owner of a certain interest in and to certain lands contiguous to but not taken by this proceeding, which interest and lands are more particularly described [119] in Paragraph I and Sub-paragraphs (b) and (c) of Paragraph 2 of the Answer of defendant Joseph Faria, Jr., filed herein on or about January 16, 1946, excepting therefrom the land described as Parcels 59 and 64 in Paragraph VII hereof; that the defendant Maria Faria, also known as Mary Faria, was at all times mentioned herein the owner of a certain interest in and to certain lands contiguous but not

taken by this proceeding, which interest and lands are more particularly described in Paragraphs 1 and 3 of the Amended Answer of defendant Maria Faria, also known as Mary Faria, filed herein on or about January 6, 1947, excepting therefrom the land described as Parcel 59 in Paragraph VII hereof, and that no other person, firm or corporation had any interest in the mineral rights subject of this Judgment.

VII.

The parcels of land subject of this Judgment are each of them situate in the County of Contra Costa, State of California, and more particularly described as follows:

PARCEL 3A

Tract One

That parcel of land firstly described in the Decree of Distribution entered September 25, 1922 in the Superior Court of the State of California, in and for the County of Contra Costa, in the matter of the estate of Henry G. Bollman, deceased, (Case No. 5140), a certified copy of which was recorded September 25, 1922 in Volume 428 of Deeds, at page 37, as follows:

“Being a portion of the 600 acre tract sold by S. Pacheco to George Mascarich, March 30th, 1863, and bounded Northwest by lands of Dorr Sharp, Northeast of lands of Andrew Gehringer, Southwest by lands of John Denkinger and Southeast by Ayres lands, and containing 185

acres of land, and known as the Mette place, and also known as the Daniel Matheson, in the Rancho del Diablo; and being the same land conveyed to Daniel Matheson by George Mascarich and wife, by deed dated Oct. 30th, 1883, and recorded Nov. 3, 1883, in Vol. 44 of Deeds at page 136, records of Contra Costa County, California.”

For exceptions to Tract One of this description see exceptions following Tract Three herein.

Tract Two

That parcel of land secondly described in the Decree of Distribution entered September 25, 1922 in the Superior Court of the State of California, in and for the County of Contra Costa, [120] in the matter of the estate of Henry G. Bollman, deceased (Case No. 5140, a certified copy of which was recorded September 25, 1922 in Volume 428 of Deeds, at page 37, as follows:

“Commencing at a stake in a mound on the Eastern side of the Monte Del Diablo Rancho, this stake being the southeast corner of tract of land sold by George Mascarich to Andrew Gehringer; thence s. $43\frac{1}{2}$ Deg. W. 75 chains to stake corner; thence at right angles S. $46\frac{1}{2}$ Deg. E. $15.33\frac{1}{3}$ chains to a stake corner; thence at right angles N. $43\frac{1}{3}$ Deg. East 75 chains to a stake corner; thence at right angles North $46\frac{1}{2}$ Deg. West $15.33\frac{1}{3}$ chains to point of beginning. Containing 115 acres of land, ac-

ording to the survey made by James B. Abbott Feb. 23, 1863, being the same property deeded by H. Robinson to Dorr Sharp, by deed executed Oct. 4, 1877, recorded Oct. 11, 1877, in Vol. 34, of deeds at page 281, Records of Contra Costa County, and is the same property conveyed by Dorr Sharp to Andrew Gehringer by deed dated Nov. 5, 1885, and recorded Nov. 5th, 1885, in Vol. 47 of deeds at page 266."

For exceptions to Tract Two of this description see exceptions following Tract Three herein.

Tract Three

Those parcels of land thirdly described in the Decree of Distribution entered September 25, 1922 in the Superior Court of the State of California, in and for the County of Contra Costa, in the matter of the estate of Henry G. Bollman, deceased, (Case No. 5140), a certified copy of which was recorded September 25, 1922 in Volume 428 of Deeds, at page 37, as follows:

"Beginning at the S. E. Corner of that certain tract of land conveyed by George Mas-carich to Andrew Gehringer, March 31st, 1863, thence N. 43-1/4 deg. East running along the East boundary of lands of Gehringer estate 37.61 chains to station, being the corner to divisions 'A' and 'C' of the Gehringer Estate Partition, thence N. 52 Deg. 53' W. 11.695 chains to station at the N. E. boundary of private road; thence S. 43 Deg. W. 36.43 chains

to station in South line of lands of Gehringer estate at the corner of Division 'A' and 'B'; thence S. 47 Deg. 5' E. 11.595 chains into place of beginning. Containing an area of 43.00 acres of land."

Also Part 2 Division 'B' of said Gehringer Estate, being portions of Rancho Monte Del Diablo and portion of Section 27, T. 2 N., R. 1 W., M. D. M., described as follows:

Beginning at the Northwest corner of a tract of land conveyed by Andrew Gehringer to H. G. Bollman by deed dated February 24th, 1886, thence S. 46 Deg. 50' E., (following fence line and along North Boundary of Bollman's land), 40.18 chains to station corner to lands of Matherson (Matheson) and Bollman; thence N. 43 Deg. E. 25.78 chains to station in North boundary of Rancho Monte Del Diablo; thence S. 47½ Deg. E. running along said boundary line 10.00 chains to station to the point of intersection of the center line of Section 27, T. 2 N., R. 1 W. with the same ranch boundary; thence N. ½ Deg. W., running along the center line of Sec. 27, 64.00 chains to [121] quarter section corner between Sections 22 and 27, T. 2 N., R. 1 W.; thence S. 89-1/4 Deg. W. running along and between Sections 22 and 27, 37.22 chains to station; thence S. 21 3/4 Deg. E. 6.50 chains to station in fence; thence S. 8 Deg. E. 5.84 chains (following fence) to station; thence S. 34 Deg. E., following fence 10.78 chains to

station; thence S. $43\frac{1}{4}$ Deg. W. 37.67 chains into place of beginning. Containing an area of 263.41 acres of land.

Also one third ($\frac{1}{3}$) undivided interest in a private road 40 feet wide described as follows:

Beginning at gate post where the South line of the private road intersects west line of lands of Gehringer Estate; thence S. $48\frac{3}{4}$ Deg. E., running along the North line of Division 'A' of Gehringer Estate Partition 20.16 chains to station; thence S. 52 Deg. 53' E. 8.575 chains to station; thence N. 43 Deg. E. 40 feet; thence N. 52 Deg. 53' W. 8.575 chains to station; thence N. $48\frac{3}{4}$ Deg. W. 20.16 chains to West line of lands of Gehringer Estate; thence S. 43 Deg. W. 40 feet into place of beginning. Containing 1.75 acres.

Also one-third undivided interest in a certain strip of land used as a private road, conveyed by Salvio Pacheco to Andrew Gehringer, by deed dated Mar. 12th, 1866, recorded in Vol. 13 of Deeds, page 405, records of Contra Costa County, and described as follows, to wit:

Beginning at fence post situated in a gate way in west line of lands of Gehringer Estate, thence N. $59\frac{1}{2}$ Deg. W., along North Boundary of road crossing Diablo Creek, 24.45 chains to station; thence N. $65\frac{3}{4}$ Deg. W., 14.06 chains to station; thence N. $73\frac{3}{4}$ Deg. W. 6.51 chains to station; thence S. 80 Deg. W., 17.59 chains to

station; thence N. 73 3/4 Deg. W. 9.39 chains to station; thence N. 71½ Deg. W. 11.68 chains to station in east boundary of Willow Pass Road; thence Southerly along east boundary of said road 33 feet to station; thence running Easterly parallel with Northern boundary of private road to station in West line of lands of Gehringer Estate, at N. W. corner of Division 'A'; thence Northerly running along westerly line of lands of Gehringer Estate, 33 feet into place of beginning. Containing an area of 4.18 acres of land."

Excepting From Said Tracts One, Two and
Three Above:

1—As to Tracts One and Two: The parcel of land conveyed by deed from H. G. Bollman, et ux., to Bay Point and Clayton Railroad Company, dated November 28, 1906 and recorded December 12, 1906 in Volume 122 of Deeds, at page 216, described as follows:

"A strip or tract of land seventy (70) feet wide across the lands of the parties of the first part hereinafter mentioned, being the strip or tract of land included between two parallel lines extending across said lands of the parties of the first part and drawn one on each side of the located center line of the railroad of the party of the second part and thirty-five (35) feet distant therefrom, said center line being particularly described as follows. to wit: [122]

“Beginning at the Northwest boundary line of the One hundred and fifteen acre tract hereinafter mentioned at a point distant along said Northwestern boundary line Ten Hundred and Twenty-four (1024) feet Southwesterly from the Northerly corner of said One hundred and fifteen acre tract, and from said point of beginning running South Fifty-seven degrees (57°) Fifty-eight and one-half minutes ($58\frac{1}{2}'$) East a distance of Six hundred and Ninety-four and three-tenths (694.3) feet; thence on a four degree curve to the right tangent to said last mentioned course, a distance of Eighteen Hundred and Forty-eight and eight-tenths (1848.8) feet more or less; thence tangent to said curve and bearing South Six degrees (6°) Thirteen Minutes ($13'$) West a distance of Six hundred and thirty-one and two-tenths (631.2) feet to a point in the Southeasterly boundary line of the One Hundred and Eighty-five (185) acre tract hereinafter mentioned, which last mentioned point is distant Nine Hundred and Five (905) feet Northeasterly along said boundary line from the Northwesterly corner of the One Hundred Acre tract now or formerly belonging to F. H. Ransome, containing five (5) acres more or less. Said lands of the parties of the first part across which said strip hereby conveyed extends being those two certain tracts of land of One Hundred and Fifteen (115) acres and One Hundred and Eighty-five (185) acres respectively, belonging to the parties of the first

part and adjoining each other, and bounded on the Northwest by the lands now or formerly belonging to one Mrs. L. McKean and on the Southeast by the lands now or formerly belonging to one F. H. Ransome, and being a part of the Rancho Monte Del Diablo.”

2—As to Tracts One and Two: Those parcels of land conveyed by deed from Ralph D. Bollman, et al., to the United States of America, dated January 26, 1942 and recorded April 23, 1942 in Volume 702 of Official Records, at page 24, described as follows:

“Two parcels of land in the Rancho Monte Del Diablo, having a combined area of 8.67 acres, more or less, lying within the boundaries of that certain tract of land containing an area of 115 acres, more or less, described as Parcel No. Two and that certain tract of land containing an area of 185 acres, more or less, described as Parcel One, in that certain mortgage from Ralph D. Bollman to Marian Bollman Smith, dated March 25, 1938 and recorded on March 25, 1938 in Volume 447 of Official Records at page 150, Records of Contra Costa County; said two parcels of land having a combined area of 8.67 acres, more or less, are separately described as follows:

Parcel No. One: Beginning at point in the Northwesterly boundary of said 115 acre mortgage Parcel No. Two, distant along said northwesterly boundary North 43° 27' East

158.5 feet from the point where said boundary intersects the center line of that certain strip of land 70 feet in width, conveyed by H. G. Bollman and Mattie Smith Bollman to the Bay Point and Clayton Railroad Company by deed dated November 28, 1906 and recorded on December 12, 1906 in Volume 122 of Deeds at page 216, Records of Contra Costa County, and also distant along said northwesterly boundary North $43^{\circ} 27'$ East 1619.8 feet from the most easterly corner of that certain tract of land containing an area of 43 acres, more or less, described firstly in Parcel No. Three in aforesaid mortgage from Ralph D. Bollman to Marian Bollman Smith, said most easterly corner being also [123] the most southerly corner of that certain tract of land described as Parcel One in that certain deed of trust from Lena McKean to Willard D. Ellis, et al., trustees for the Federal Land Bank of Berkeley, dated September 1, 1933 and recorded on February 1, 1934 in Volume 353 of Official Records at page 376, Records of Contra Costa County, and running thence along said northwesterly boundary North $43^{\circ} 27'$ East 20.1 feet; thence leaving said boundary and running South $51^{\circ} 38'$ East 932.1 feet; thence South $31^{\circ} 44'$ West 48.3 feet to a point in the northeasterly boundary of aforesaid strip of land having a width of 70 feet conveyed to the Bay Point and Clayton Railroad Company; thence along the northeasterly boundary of said 70

foot strip conveyed to the Bay Point and Clayton Railroad Company; thence along the northeasterly boundary of said 70 foot strip conveyed to the Bay Point and Clayton Railroad Company, as follows: From a tangent bearing North $51^{\circ} 35'$ West, northwesterly on a curve to the left with a radius of 1467.47 feet for a distance of 25.16 feet to a point which bears South $59^{\circ} 35'$ East 937.4 feet from the point where the center line of said 70 foot strip intersects the northwesterly boundary of aforesaid 115 acre mortgage Parcel No. Two, said point of intersection being described as the point of beginning in said deed to the Bay Point and Clayton Railroad Company; thence continuing northwesterly on said curve to the left with a radius of 1467.47 feet for a distance of 30.38 feet; thence from a tangent bearing North $53^{\circ} 45'$ West, northwesterly on a curve to the left with a radius of 1672.09 feet for a distance of 30.64 feet; thence from a tangent bearing North $54^{\circ} 48'$ West, northwesterly on a curve to the left with a radius of 1944.91 feet for a distance of 30.55 feet; thence from a tangent bearing North $55^{\circ} 42'$ West, northwesterly on a curve to the left with a radius of 23.26.88 feet for a distance of 30.46 feet; thence from a tangent bearing North $56^{\circ} 27'$ West, northwesterly on a curve to the left with a radius of 2899.84 feet for a distance of 30.37 feet; thence from a tangent bearing North $57^{\circ} 03'$ West, northwesterly on a curve to the left with a radius of 3854.74

feet for a distance of 30.28 feet; thence from a tangent bearing North $57^{\circ} 30'$ West, northwesterly on a curve to the left with a radius of 5764.61 feet for a distance of 30.18 feet; thence from a tangent bearing North $57^{\circ} 48'$ West, northwesterly on a curve to the left with a radius of 11,494.17 feet for a distance of 30.09 feet; thence North $57^{\circ} 57'$ West 687.2 feet to a point in the northwesterly boundary of aforesaid 115 acre mortgage Parcel No. Two; thence leaving the northeasterly boundary of said 70 foot strip and running along the northwesterly boundary of said 115 acre mortgage Parcel No. Two North $43^{\circ} 27'$ East 122.8 feet to a point of beginning and containing an area of 1.96 acres, more or less.

Parcel No. Two: Beginning at a point in the Southwesterly boundary of aforesaid strip of land 70 feet in width conveyed to the Bay Point and Clayton Railroad Company distant South $55^{\circ} 23'$ East 903.3 feet from the point where the center line of said 70 foot strip intersects the northwesterly boundary of the 115 acre tract of land hereinbefore described as Mortgage Parcel No. Two and also distant South $74^{\circ} 45'$ West 87.9 feet from the most southerly corner of the 1.96 acre parcel hereinbefore described as Parcel No. One; thence from a tangent bearing South $53^{\circ} 43'$ East, southeasterly along the southwesterly boundary of said 70 foot strip conveyed to the Bay Point

and Clayton Railroad Company, on a curve to the right with a radius of 1397.47 feet for a distance of 35.16 feet; thence continuing along said boundary southeasterly on said curve to the right with a radius of [124] 1397.47 feet for a distance of 25.17 feet; thence leaving said boundary and running South $17^{\circ} 30'$ East 66.0 feet; thence South $22^{\circ} 52'$ East 556.4 feet; thence along the arc of a curve to the right (tangent to the preceding course) with a radius of 125 feet, a distance of 125.2 feet; thence South $34^{\circ} 32'$ West 274.7 feet; thence along the arc of a curve to the right, (tangent to the preceding course) with a radius of 225 feet, a distance of 35.0 feet; thence South $43^{\circ} 26'$ West 390.3 feet; thence along the arc of a curve to the left, (tangent to the preceding course) with a radius of 475 feet, a distance of 33.2 feet; thence South $39^{\circ} 26'$ West 170.6 feet; thence along the arc of a curve to the right, (tangent to the preceding course) with a radius of 125 feet, a distance of 46.9 feet; thence South $60^{\circ} 56'$ West 1150.0 feet; thence along the arc of a curve to the left, (tangent to the preceding course) with a radius of 75 feet, a distance of 23.1 feet; thence South $43^{\circ} 19'$ West 1555.3 feet; thence South $51^{\circ} 19'$ West 124.4 feet to a point in the boundary between aforesaid 185 acre tract of land described as Parcel No. One in said mortgage to Marian Bollman Smith and the R. M. Burgess Company's Map No. 1, Gehringer Subdivision, a Portion of Rancho Monte

Del Diablo, Contra Costa County, Calif." filed on May 28, 1918 in Map Book 16 at page 353, in the office of the County Recorder of Contra Costa County, distant along said boundary South $46^{\circ} 41' 30''$ East 181.8 feet from the most northerly corner of Lot 26 of said Gehringer Subdivision as shown on said map; thence along said boundary North $46^{\circ} 41' 30''$ West 25.0 feet; thence continuing along said boundary North $46^{\circ} 41' 30''$ West 156.8 feet to the most northerly corner of said Lot 26, said most northerly corner being distant along said boundary South $46^{\circ} 41' 30''$ East 83.5 feet from the most southerly corner of that certain 115 acre tract described as Parcel No. Two in said mortgage to Marian Bollman Smith; thence continuing along said boundary North $46^{\circ} 41' 30''$ West 10.4 feet to a point in the easterly boundary of a County Road; thence leaving the boundary between said 185 acre tract and said Gehringer Subdivision and running along the easterly boundary of said County Road North $22^{\circ} 53'$ East 25.95 feet; thence from a tangent bearing North $22^{\circ} 53'$ East, continuing northerly along the easterly boundary of said County Road on a curve to the right with a radius of 380 feet for a distance of 27.0 feet; thence leaving said easterly boundary and running South $46^{\circ} 42'$ East 148.0 feet; thence North $56^{\circ} 40'$ East 82.4 feet; thence North $43^{\circ} 19'$ East 1548.3 feet; thence along the arc of a curve to the right (tangent to the preceding course) with a radius

of 135 feet, a distance of 41.5 feet; thence North $60^{\circ} 56'$ East 1150.0 feet; thence along the arc of a curve to the left (tangent to the preceding course) with a radius of 65 feet, a distance of 24.4 feet; thence North $39^{\circ} 26'$ East 170.6 feet; thence along the arc of a curve to the right (tangent to the preceding course), with a radius of 535 feet, a distance of 37.4 feet; thence North $43^{\circ} 26'$ East 390.3 feet; thence along the arc of a curve to the left, (tangent to the preceding course) with a radius of 165 feet, a distance of 25.6 feet; thence North $34^{\circ} 32'$ East 121.2 feet; thence North $55^{\circ} 28'$ West 40.0 feet; thence North $34^{\circ} 32'$ East 214.8 feet; thence North $22^{\circ} 52'$ West 481.5 feet; thence North $43^{\circ} 00'$ West 131.2 feet; thence North $31^{\circ} 44'$ East 100.00 feet, more or less, to the point of beginning, and containing an area of 6.71 acres, more or less."

3—That parcel of land and right of way conveyed by deed from Ralph D. Bollman, et ux., to R. D. Russell, dated December 10, 1943 and recorded March 14, 1944 in Volume 751 of Official Records, at page 339, described as follows: [125]

"Parcel One: Portion of the Rancho Monte Del Diablo containing 25 acres, more or less, described as follows:

Beginning at the most westerly corner of the

43 acre parcel of land thirdly described in the Decree of Distribution entered September 25, 1922 in the Superior Court of the State of California, in and for the County of Contra Costa, in the matter of the estate of Henry G. Bollman, deceased, (Case No. 5140) a certified copy of which was recorded September 25, 1922 in Volume 428 of Deeds, at page 37, thence from said point of beginning North $43^{\circ} 30'$ East along the northwest line of said 43 acre parcel of land 610.08 feet; thence South $46^{\circ} 30'$ East 1799.95 feet to the center line of a 40 foot in width road; thence along said center line as follows: South $43^{\circ} 30'$ West 452.27 feet, southwesterly along the arc of a curve to the left with a radius of 400 feet, tangent to the last mentioned course 142.83 feet and South $23^{\circ} 02' 30''$ West tangent to said curve 10.85 feet to the southwest line of the 185 acre parcel of land firstly described in said decree of distribution (428 D 37); thence north $46^{\circ} 30'$ West along said southwest line and along the southwest line of the 115 acre parcel of land secondly described in said decree of distribution (428 D 37) 1085.02 feet; thence North $47^{\circ} 05'$ West along the southwest line of the above mentioned 43 acre parcel of land 764 feet to the point of beginning."

"Parcel Two: A right of way (not to be exclusive) as an appurtenance to the tract of land described as Parcel One above, for use as a roadway, for vehicles of all kinds, pedestrians

and animals, for water, gas, oil and sewer pipe lines, and for telephone, electric light and power lines, together with the necessary poles or conduits to carry said lines over a strip of land 20 feet in width, the southeast line of which is 20 feet southeasterly measured at right angles or radially from the northwest line thereof and which northwest line is the southeast line of said Parcel One above."

4—As to Tract Three: That Portion of the Northwest quarter of Section 27, Township 2 North, Range 1 West, Mount Diablo Base and Meridian described as follows:

Beginning at the Northeast corner of the Northwest quarter of said Section 27; running thence South $89^{\circ} 15'$ West along the North line of said Section 27, a distance of 37.22 chains, more or less, to an angle point in the Northeasterly boundary line of that certain 4961.16 acre parcel of land described in the amended complaint in the proceeding, entitled United States of America vs. 5430 acres of land, et al., Case No. 23529-G, on file herein; thence South $53^{\circ} 13' 31''$ East along said Northeasterly boundary line 3080 feet, more or less, to the East line of the Northwest quarter of said Section 27; thence North along said East line 1870 feet, more or less, to the point of beginning, containing, after said exceptions, a net area of 512.22 acres, more or less. [126]

PARCEL 57

Portion of Lot 1, Section 21, and portion of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian, containing 4.96 acres, more or less, described as follows:

Beginning as a point on the North line of the Rancho Monte Del Diablo where said line is intersected by the West line of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian; thence from said point of beginning, along the West line of said Section 21, North 689.97 feet; thence leaving the West line of said Section 21, South $74^{\circ} 53'$ East 333.40 feet; thence South $0^{\circ} 47\frac{1}{2}'$ East 351.38 feet; thence South $72^{\circ} 31'$ East 29.97 feet; thence South $28^{\circ} 35'$ West 430.40 feet to the fence line and the North line of the Rancho Monte Del Diablo; thence along said fence and Rancho line, North $47^{\circ} 49'$ West 201.53 feet to the point of beginning.

PARCEL 58

Portion of the southwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian, containing 5 acres, more or less, described as follows:

Beginning at a point which bears north $2^{\circ} 33'$ west, 43.51 feet from a concrete monument

in the easterly line of the Rancho Monte Del Diablo, which monument is the most northerly corner of the parcel of land described in the deed of trust from Joseph Williams, Jr., et ux., to Willard D. Ellis, et al., trustees for the Federal Land Bank of Berkeley, dated January 1, 1934, and recorded January 23, 1934, in Volume 353 of Official Records at page 312; thence from said point of beginning north $30^{\circ} 10'$ east 570.68 feet; thence south $46^{\circ} 15'$ east 392.48 feet; thence south $30^{\circ} 10'$ west 570.68 feet; thence north $46^{\circ} 15'$ west 392.48 feet to the point of beginning.

PARCEL 59

Parcel One

Lots 1, 2 and 3; the north $\frac{1}{2}$ of the northwest $\frac{1}{4}$; the southeast $\frac{1}{4}$ of the northwest $\frac{1}{4}$; the south $\frac{1}{2}$ of the northeast $\frac{1}{4}$; the north $\frac{1}{2}$ of the southeast $\frac{1}{4}$; and the southeast $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian.

EXCEPTING FROM PARCEL ONE:

1—That parcel of land described in the deed from Antone Faria, to Joseph S. Williams, Jr., dated April 21, 1911 and recorded April 21, 1911 in Volume 162 of Deeds, at page 562, as follows:

“Beginning at a station post in the division

fence between the lands belonging to the party of the first part in the southwest Quarter of Section 21 T. 2 N. R. 1 W. M. D. M. and lands of J. S. Williams, Jr., known as the Fernandez Ranch [127] in the Rancho Monte Del Diablo; thence N. $65\frac{3}{4}^{\circ}$ E. 284.4 feet to station; thence S. $29\frac{1}{4}^{\circ}$ E. to and crossing a creek that runs from near Antone Faria's dwelling 122 feet to station; thence S. $54\frac{1}{2}^{\circ}$ W. 229.00 feet to station in aforesaid boundary between Antone Faria and J. S. Williams, Jr.; thence N. $47\frac{1}{2}^{\circ}$ W. along said boundary at 112.00 feet crossing said creek 173.00 feet to point of beginning, and containing .84 acres of land more or less."

2—That parcel of land described in the deed from Antone Faria, et ux., to Frank J. Dutra, dated December 3, 1927 and recorded December 5, 1927 in Volume 111 of Official Records, at page 183, as follows:

"Beginning at a point on the northerly boundary line of the Rancho Monte Del Diablo where said line is intersected by the westerly line of Section 21, Township 2 North, Range 1 West, M. D. B. & M.; thence running along the westerly boundary line of said Section 21, North a distance of 689.97 feet to a point; thence leaving the westerly boundary of said Section 21, S. $74^{\circ} 53'$ E., a distance of 333.40 feet to a point; thence S. $0^{\circ} 47\frac{1}{2}'$ E., a distance of 351.38 feet to a point; thence S. $72^{\circ} 31'$ E., a distance of 29.97 feet to a point; thence S. $28^{\circ} 35'$ W., a distance

of 430.40 feet to a point in the fence line and the northerly boundary line of the Rancho Monte Del Diablo; thence running along said fence and boundary line N. 47° 49' W., a distance of 201.53 feet to the point of beginning. Containing an area of 4.96 acres of land and being a portion of the Northwest quarter of Section 21, Township 2 North, Range 1 West, M. D. B. & M."

3—That parcel of land described in the deed from Mary Faria to Edward Faria, dated August 11, 1941 and recorded August 14, 1941 in Volume 591 of Official Records, at page 466, as follows:

"Portion of the southwest 1/4 of the northwest 1/4 of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian, containing 5 acres, more or less, described as follows:

Beginning at a point which bears north 2° 33' west, 43.51 feet from a concrete monument in the easterly line of Rancho Monte Del Diablo, which monument is the most northerly corner of the parcel of land described in the deed of trust from Joseph Williams, Jr., et ux., to Willard D. Ellis, et al., trustees for The Federal Land Bank of Berkeley, dated January 1, 1934 and recorded January 23, 1934 in Volume 353 of Official Records, at page 312; thence from said point of beginning north 30° 10' east

570.68 feet; thence south $46^{\circ} 15'$ east 392.48 feet; thence south $30^{\circ} 10'$ west 570.68 feet; thence north $46^{\circ} 15'$ west 392.48 feet to the point of beginning."

Parcel Two

That parcel of land described in the deed from Joseph Faria, et ux., to Antonio Faria, et ux., dated February 20, 1923 and recorded February 20, 1923 in Volume 432 of Deeds, at page 181, as follows:

Commencing at the center of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian; running thence east along the south line of the northeast quarter of said [128] Section 21, 80 rods, more or less, to the southeast corner of the northwest quarter of said Section 21, station fence post; thence northeasterly along fence to a point on the north line of the south half of the northwest quarter of section 22, 48 rods easterly from the northwest corner of the south half of the northwest quarter of Section 22; thence west along the north line of the south half of the northwest quarter of Section 22, and along the north line of the south half of the northeast quarter of Section 21, to the northwest corner of the south half of the northeast quarter of Section 21; thence south along the western boundary line of the northeast quarter of Section 21 to

the place of beginning, being all of the south half of the northeast quarter of Section 21, T. 2 N., R. 1 W., M. D. M., and all of that portion of the south half of the northwest quarter of Section 22, T. 2 N., R. 1 W., M. D. M., lying west of the fence which runs from the southwest corner of the south half of Section 22, northeasterly to the north line thereof; the whole of said premises hereby conveyed containing 92 acres, more or less.

Parcel Three

That parcel of land described in the deed from Joseph S. Williams, Jr., to Antone Faria, dated April 21, 1911 and recorded April 21, 1911 in Volume 162 of Deeds, at page 564, as follows:

Beginning at a fence post in the dividing line between lands of J. S. Williams, Jr., in the Rancho Monte Del Diablo formerly known as the Fernandez Ranch and the lands of Antone Faria in the southwest quarter of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian; thence meandering along a fence on the west side of the road leading to Antone Faria's dwelling house; South 10° West 1.00 chain to station; thence South 4° East 1.00 chain to station; thence South $18\frac{1}{2}^{\circ}$ East 1.00 chain to station; thence South $31\frac{1}{2}^{\circ}$ East 1.00 chain to station;

thence South 42° East 1.00 chain to station;
thence South $54^{\circ} 40'$ East 1.00 chain to station;
thence South $60 \frac{3}{4}^{\circ}$ East 1.00 chain to station;
thence South $66 \frac{1}{2}^{\circ}$ East 1.00 chain to station;
thence South $71 \frac{1}{2}^{\circ}$ East 1.00 chain to station;
thence South 85° East 1.00 chain to station;
thence South $83 \frac{1}{2}^{\circ}$ East .80 chains to station;
thence North $47 \frac{1}{4}^{\circ}$ West along the division
line between Antone Faria and J. S. Williams,
Jr., 9.61 chains to point of beginning, and con-
taining 1.20 acres of land, more or less.

Parcel Four

The right of way granted in the deed from Frederick W. Blume, et al., to Antone Faria, et al., dated February 16, 1916 and recorded March 7, 1916 in Volume 266 of Deeds, at page 60, as follows:

Beginning at station post J. G. on the northeasterly boundary line of the Rancho Monte Del Diablo in the survey made for John Garcia of the westerly portion of the tract of land formerly claimed by Bertolo Perez, the same being corner of lands now owned by Joseph Williams, Jr., and lands of the parties of the first part; thence south $30 \frac{1}{4}^{\circ}$ West along the dividing line between lands of Joseph Williams, Jr. and lands of the parties of the first part 50 chains more or less to the [129] northeasterly boundary line of a strip of land thirty feet wide owned and used by Joseph Williams, Jr. as a

private road, the said northeasterly boundary line thereof being thirty feet northeasterly from the northeasterly boundary of the Bay Point and Clayton Railroad right of way; thence northwesterly along the northeasterly boundary line of said Williams Road, twenty-five feet; thence northeasterly and parallel with the dividing line between lands of Williams and lands of the parties of the first part, fifty chains, more or less, to the dividing line between lands of the parties of the first part and lands of Manuel V. Braz and Frank Manuel; thence southeasterly along said dividing line twenty-five feet, more or less, to the place of beginning and being a strip of land twenty-five feet off the southeasterly side of the lands of parties of the first part, formerly known as the Garcia Ranch.

PARCEL 64

Parcel One

The southwest quarter of Section 22, in Township 2 North, Range 1 West, Mount Diablo Base and Meridian.

Containing an area of 160 acres, more or less.

Parcel Two

The south one-half of the northwest quarter of Section 22, Township 2 North, Range 1 West, Mount Diablo Base and Meridian.

Excepting therefrom the following:

(1) That certain parcel of land described in that certain deed dated September 3, 1904, executed by Joseph Faria to W. W. Wight and S. A. Sellers and recorded November 14, 1904 in Volume 109 of Deeds, page 198, described as follows:

A rectangular piece of land 14 rods wide, East and West, and 80 rods long north and south, off of the east end of the south one-half of the northwest quarter of Section 22, Township 2 North, Range 1 West, Mount Diablo Base and Meridian.

(2) That portion of that certain parcel of land included in the south half of the northwest quarter described in deed dated February 20, 1923 executed by Joseph Faria and Geraldine Faria, his wife, to Antonio Faria and Mary Faria, his wife, and recorded February 20, 1923 in Volume 432 of Deeds, page 181, described as follows:

Commencing at the center of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian, running thence east, along the south line of the northeast quarter of said Section 21, 80 rods, more or less to the southeast corner of the northwest quarter of Section 21, Station fence post; thence northeasterly along fence to a point on the north line

of the south one-half of the northwest quarter of Section 22, 48 rods easterly from the northwest corner of the south one-half of the northwest quarter of Section 22, thence west along the north line of the south one-half of the northwest quarter of Section 22, and along the north line of the south one-half of the northeast quarter of Section 21 to the northwest corner of the south one-half of the northeast quarter of Section 21; thence south along the western boundary line of the northeast quarter of Section 21, to the place of beginning, being all of the south one-half of the northeast quarter of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian and all of that portion of the south half of the northwest quarter of Section 22, Township 2 North, Range 1 West Mount Diablo Base and Meridian, lying west of fence which runs from the southwest corner of the south one-half of Section 22, northeasterly to the north line thereof; the whole of said premises hereby conveyed containing 92 acres more or less.

Said parcel two containing a net area of 61 acres of land, more or less. [130]

Now, therefore, by virtue of the Findings of Fact and the verdict of the Jury aforesaid, it is ordered, adjudged and decreed that the estate and interest hereinabove described in Paragraph IV shall vest in the United States of America forthwith upon payment into the Registry of this Court by plaintiff

of the sums hereinabove found to be full, adequate and just compensation for the taking of the estate and interest subject of this Judgment in and to the above described parcels of land and said estate and interest described is deemed to and is taken and condemned for public uses of the United States and is authorized by law, and said estate and interest shall vest in the United States of America free and discharged of all claims, liens and encumbrances of every kind whatsoever; and

It is further ordered, adjudged and decreed that as full, adequate and just compensation for the taking and condemning of the interest of Cal-Bay Corporation in Parcel 57 and any and all damages resulting therefrom, the sum of sixty and no/100 dollars (\$60.00), together with interest at the rate of six per cent (6%) per annum from July 24, 1944, until the date of payment thereof, and for the taking and condemning of the interest of Cal-Bay Corporation in the estate taken in Parcels 58 and 59, and any and all damages resulting therefrom, the sum of eight hundred ninety-six and no/100 dollars (\$896.00), together with interest at the rate of six per cent (6%) from July 15, 1945, until the date of payment thereof, are hereby awarded to the defendant Cal-Bay Corporation; and

It is further ordered, adjudged and decreed that as full, adequate and just compensation for taking and condemning of the interest of the defendant Joseph Faria, Jr. in Parcels 59 and 64, and any and all damages resulting therefrom, the sum of five

hundred seventeen and no/100 dollars (\$517.00), together with interest at the rate of six per cent (6%) per annum from July 24, 1944, to the date of payment thereof is awarded to the defendant Joseph Faria, Jr.; and

It is further ordered, adjudged and decreed that as full, adequate and just compensation for the taking and condemning of the interest of Maria Faria, also known as Mary Faria, in Parcel 59, and any and all damages resulting therefrom, the sum of two thousand three hundred twelve and no/100 dollars (\$2,312.00), together with interest at the rate of six per cent (6%) per annum from July 24, 1944 [131] to the date of payment thereof is awarded to the defendant Maria Faria, also known as Mary Faria; and

It is further ordered, adjudged and decreed that as full, adequate and just compensation for taking and condemning of the interest of Edward Faria in Parcel 58, and any and all damages resulting therefrom, the sum of fifty and no/100 dollars (\$50.00), together with interest at the rate of six per cent (6%) per annum from July 24, 1944, to the date of payment thereof is awarded to the defendant Edward Faria; and

It is further ordered, adjudged and decreed that as full, adequate and just compensation for the taking and condemning of the interest of Mae E. Roche, also known as Mae Dutra Roche, in Parcel 57, and any and all damages resulting therefrom,

the sum of sixty and no/100 dollars (\$60.00), together with interest at the rate of six per cent (6%) per annum from July 24, 1944, to the date of payment thereof is awarded to the defendant Mae E. Roche, also known as Mae Dutra Roche; and

It is further ordered, adjudged and decreed that defendant Joseph Faria, Jr. is entitled to no compensation for the taking of Parcel 3A, and any and all damages resulting therefrom, subject hereof.

Done in open Court this 28th day of February, 1947.

/s/ LOUIS E. GOODMAN,

Judge, United States District Court,
Northern District of California.

[Endorsed]: Filed and Entered Feb. 28, 1947.

[Title of District Court and Cause.]

NOTICE OF ENTRY OF JUDGMENT

To M. Mitchell Bourquin, Esq.,
620 Market Street, San Francisco, Calif.,
A. J. Scampini, Esq.,
300 Montgomery Street, San Francisco, Calif.,
Walter E. Hettman, Esq.,
300 Montgomery Street, San Francisco, Calif.,
Herbert Chamberlin, Esq.,
Russ Building, San Francisco, Calif.

You Are Hereby Notified that on February 28, 1947, Judgment was entered of record in this office in the above entitled case.

C. W. CALBREATH, *jes*
Clerk, U. S. District Court.

San Francisco, California,

March 11, 1947. [133]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Defendants Cal-Bay Corporation, Mary Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche, hereby move the above entitled court for an order setting aside the verdict or verdicts of the jury rendered in the above entitled action on February 7, 1947, vacating the judgment or judgments

entered on said verdict or verdicts, and granting said defendants and each of them a new trial for the following and each of the following causes, grounds, or reasons:

1. Irregularities in the proceedings of the court by which defendants were prevented from having a fair trial.
2. Inadequate damages appearing to have been given under the influence of passion or prejudice. [134]
3. Insufficiency of the evidence to justify the verdict or verdicts.
4. The verdict is against law as to each said defendant.
5. Error in law occurring at the trial and excepted to by said defendants.

Said Motion Is Made pursuant to the provisions of Section 657 of the Code of Civil Procedure of the State of California, pursuant to the provisions of Title 28, U.S.C.A., sec. 391, and pursuant to Rule 59 of the Federal Rules of Civil Procedure, in so far as said provisions and Rule are applicable to condemnation proceedings prosecuted within the State of California.

Said Motion is made upon the pleadings and proceedings in said action, upon the minutes of the

court, and upon the Reporter's Transcript of testimony and proceedings.

Dated, San Francisco, March 13th, 1947.

/s/ A. J. SCAMPINI,

/s/ WALTER E. HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for said

Defendants.

[Endorsed]: Filed March 14, 1947. [135]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 8th day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

ORDER DENYING MOTION
FOR NEW TRIAL

The motion of defendants Cal-Bay Corp., Mary Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche for a new trial having been submitted to the Court for consideration and decision and due

consideration having been had thereon, it is Ordered that said motion be and it is hereby denied. [136]

[Title of District Court and Cause.]

NOTICE OF ORDER DENYING MOTION
FOR NEW TRIAL

To the Defendants Maria Faria, also known as Mary Faria, Edward Faria, Joseph Faria, Jr., Mae E. Roche, also known as Mae Dutra Roche, and Cal-Bay Corporation, and to A. J. Scampini, Walter Hettman and Herbert Chamberlin, their attorneys:

You and Each of You Will Please Take Notice that on the 8th day of April, 1947, the above entitled Court did enter its Order Denying the Motion of the above Defendants for a New Trial in this action as to Parcels 3A, 57, 58, 59 and 64.

Dated this 9th day of April, 1947.

UNITED STATES OF
AMERICA,

By /s/ M. MITCHELL BOURQUIN,
Special Assistant to the
Attorney General,
Attorney for Plaintiff.

[Endorsed]: Filed April 21, 1947. [137]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO
CIRCUIT COURT OF APPEALS

Notice Is Hereby Given that the above named defendants Cal-Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche, hereby appeal, and each said defendant hereby appeals, to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on February 28, 1947. The said defendants, separately and collectively, appeal from each and every part of said judgment.

Dated, San Francisco, April 24, 1947.

/s/ A. J. SCAMPINI,

/s/ WALTER E. HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for said Appellants.

[Endorsed]: Filed April 26, 1947. [138]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

In accordance with Rule 75 of the Federal Rules of Civil Procedure, the defendants Cal-Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche, hereby designate all of the following parts of the record, proceedings, and evidence in the case to be contained in the record

on their appeal from the judgment entered herein on February 28, 1947:

1. Original complaint filed July 22, 1944, omitting therefrom the names of all defendants except "5,430 Acres of Land, more or less, situate in the County of Contra Costa, State of California, Cal-Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche," and omitting from Paragraph IX thereof all Parcel Nos. and Names of Owners except as to Parcels 3, 57, 58, 59, and 64.

2. Order for immediate possession dated July 24, 1944.

3. Petition for order modifying order of immediate possession as to parcels 58 and 59 and order thereon dated September 28, 1944.

4. Notice of termination of right to possession of parcels 58 and 59, filed December 20, 1944.

5. Stipulation between plaintiff and defendant Edward Faria for final judgment on parcel 58, and order thereon, filed March 8, 1945.

6. Stipulation between plaintiff and defendant Maria Faria for final judgment on parcel 59, and order thereon, filed March 12, 1945.

7. Stipulation between plaintiff and defendant Mae E. Roche for final judgment on parcel 57, and order thereon, filed March 12, 1945.

8. Answer of defendant Joseph Faria, Jr.

9. Amendment to answer of defendant Joseph Faria, Jr.

10. Amended answer of defendant Edward Faria.

11. Amended answer of defendant Mae E. Roche.

12. Amended answer of defendant Maria Faria, verified December 31, 1946.

13. Amended answer of defendant Cal-Bay Corporation, verified December 31, 1946.

14. All jury verdicts.

15. Judgment as to oil and gas rights in parcels 3A, 57, 58, 59, and 64, entered February 28, 1947.

16. Notice of entry of judgment, dated March 11, 1947.

17. Motion for new trial, filed March 14, 1947.

18. Minute order of April 8, 1947, denying motion for new trial.

19. Notice of order denying motion for new trial, dated April 9, 1947.

20. Notice of appeal.

21. Defendants' instructions refused by the Court.

22. Reporter's transcript of proceedings, all of pages 1 to 1046, both inclusive, being volumes 1 to 12, inclusive, of the transcript.

23. Defendants' exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 27, 30, 31, 34, 35, and 36.

24. Plaintiff's exhibits N, Q, R, S, T, U, and V.

25. This designation.

26. Statement of the points on which defendants intend to rely on their appeal.

Defendants and appellants will apply to the District Court for an order to send to the Appellate Court Defendants' original exhibits Nos. 10, 11, 12, 13, 17, 25, 26, 28, 29, 32, 33, 37, and 38, and Plaintiff's original exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, O, P, W, X, Y, and Z.

Annexed hereto and served with this designation is a statement of the points on which the said defendants intend to rely on their appeal.

Dated, San Francisco, May 2, 1947.

/s/ A. J. SCAMPINI,

/s/ WALTER E. HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for said

Defendants and Appellants.

Copy received this 6th day of May, 1947.

M. MITCHELL BOURQUIN,

Attorney for Plaintiff

and Respondent.

[Endorsed]: Filed May 6, 1947. [141]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH DEFENDANTS INTEND TO RELY ON THEIR APPEAL

1. Irregularities in the proceedings of the court by which the defendants and appellants were prevented from having a fair trial.

2. Inadequate damages appearing to have been given under the influence of passion or prejudice.

3. Insufficiency of the evidence to justify the verdict or verdicts.

4. The verdict is against law as to each defendant and appellant.

5. Error in law occurring at the trial and excepted to by defendants and appellants. [142]

6. The district court erred in denying appellants' motion for a new trial.

Dated, San Francisco, May 2, 1947.

/s/ A. J. SCAMPINI,

/s/ WALTER E. HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for said

Defendants and Appellants.

Copy received this 6th day of May, 1947.

M. MITCHELL BOURQUIN,

Attorney for Plaintiff

and Respondent.

[Endorsed]: Filed May 6, 1947. [143]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellants herein may have to and including July 15, 1947, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated, June 3rd, 1947.

LOUIS E. GOODMAN,

United States District Judge.

[Endorsed]: Filed June 3, 1947. [144]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellants herein may have to and including July 25, 1947, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated, July 15, 1947.

MICHAEL J. ROCHE,

United States District Judge.

[Endorsed]: Filed July 15, 1947. [145]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing 145 pages, numbered from 1 to 145, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of United States of America, Plaintiff, vs. 5,430 Acres of Land, etc., et al., Defendants, No. 23529-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$18.10 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 24th day of July, A. D. 1947.

[Seal]

C. W. CALBREATH,

Clerk,

/s/ M. E. VAN BUREN.

Deputy Clerk. [146]

In the Southern Division of the United States
District Court for the Northern District of
California.

No. 23,529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Certain Land in Contra Costa County as to Parcels
57, 58, 59 and 3-A,

Defendants.

Before: Hon. Louis E. Goodman, Judge.

REPORTER'S TRANSCRIPT

Tuesday, January 21, 1947

Appearances:

For the United States:

M. Mitchell Bourquin, Esq.,

Thomas Martin, Esq.

For Defendants:

A. J. Scampini, Esq.,

Walter E. Hettman, Esq.,

Herbert Chamberlin, Esq.

(A jury was impaneled and sworn to try the above-entitled cause, after which an adjournment was taken until tomorrow, Wednesday, January 22, 1947, at 10:00 o'clock a.m.) [1*]

*Page numbering appearing at top of page of original Reporter's Transcript.

Wednesday, January 22, 1947, 10:00 o'clock a.m.

(A juror being ill when this cause came on for trial, the court excused him and set aside the swearing of the jury.)

Afternoon Session, January 22, 1947, 2:00 p.m.

(A jury was heretofore impaneled and sworn to try the cause.)

OPENING STATEMENT ON BEHALF OF DEFENDANTS

Mr. Scampini: May it please the Court and ladies and gentlemen of the jury, the case which we are about to begin and which you will be called upon to ultimately determine and resolve is not one of the usual run-of-the-trial cases involving business contracts, or the ordinary actions at law for damages for breach of a contract. The defendants are not here today because they want to be here. We are not here because we want to be. We are here because of the action of the United States in starting the present action in July, July 22, 1944, for the purpose of condemning certain property lying approximately southwest, I think, of Port Chicago, for the expansion of the Port Chicago Ammunition Depot. We are not here protesting the action of the Government. We are not protesting any part of the action of the Government. Far be it from us to protest the action of the United States condemning the property.

Mr. Bourquin: Your Honor, I don't like to in-

interrupt, but I don't think this statement of counsel has the function of an opening statement. I believe the counsel should present to the jury what he proposes to prove, and his view as to the actions [2] of the Government are not material.

The Court: Well, I think, technically, that is correct. I don't wish to preclude him. I believe he was working up to it.

Mr. Scampini: Preliminarily, ladies and gentlemen, I was merely going to say that we are here because, as his Honor has pointed out, under the Constitution, when the Government condemns our property for public use we are entitled to just compensation for the property.

In the presentation of the evidence to you, ladies and gentlemen, so as to enable you to pass upon the fair value of this property, we run into what we believe to be one of the complexities in this case. That is why I said at the outset that this case is not the usual run-of-the-trial cases. It involves oil and gas leases, and royalty interests, and we are here to have determined the reasonable value of these oil and gas leases and royalty interests involved in this case, which as the evidence will disclose, is inextricably wound up with a determination of the value of the properties which are the subject of this action; to determine whether or not we had achieved what we believed and contend that we had achieved, the reasonable commercial discovery of natural gas.

I desire at this point to emphasize that the preliminary object of our proof is not, and our contention is not that we have discovered commercial accumulation of petroleum. Our [3] contention is we have discovered a commercial accumulation of natural gas on the property which has been condemned by the Government, and that our well had just entered the formation and was just about to be completed at the instant the action took place.

It will be necessary, in the presentation of the evidence, and during the trial, to refer to maps, because most of the evidence will be submitted to you by geological and petroleum engineers and experts, and it will be in the nature of technical evidence. Preliminarily, let us refer to this map right over here. There is at the bottom of this blackboard a map which is predicated upon the areas of the properties involved in this case. The outlines found on this map, this is an outline of the boundary of the property taken by the Government in this action, approximately 5000 acres of land, and the line found at the top, here, is the northernmost line of the boundry taken. You will find some colored portions on the map. That is the property which is the subject of our action; some of it is marked in green, others are marked in yellow, and then in some other colors, and those are the properties which were covered by the oil and gas leases, and to which I am about to refer.

As I say, the function of a preliminary statement

to the jury is to outline to you as briefly as I can the scope of the proof and many things which we expect to bring out in the course [4] of the trial. When it comes down to disclosing to you and placing into the record all the relevant evidence in this case it becomes incumbent upon us to see to it that you ladies and gentlemen are supplied with all the information that you need in order to enable you to render a just verdict when you retire, a verdict that we should all accept.

We lawyers, of course, have grown up with the case, and we have studied all of the facts, and we are familiar with them as far as we are able to be familiar with them, but you ladies and gentlemen are called upon to pass upon a very intricate case without any background about it, so it would be incumbent upon us to make available to you all of the knowledge that we possibly can, so you will be in a position to pass upon this case.

Preliminarily, in the course of the trial we will prove to your satisfaction, I believe, that on or about July 24th, or July 22, 1944, the action which is now before you was filed by the Government. At that time there was in course of being drilled on the property known as the Mary Faria property, located on this map, and indicated in the complaint as parcel 59, a well, which well had been drilled at a depth of 4375 feet for the Cal Bay Corporation. The Cal Bay Corporation had acquired a series of leases from Joseph Faria, Jr., involving 687 acres

more or less, for the purpose of exploring what appeared to it to be a very promising structure which carried with it potential accumulations of oil and natural gas. [5]

These leases had been gotten together by Mr. Joseph Faria and one Bud Hildebrand during the latter part of 1941. The evidence will disclose that neither Joseph Faria or Bud Hildebrand were entirely inexperienced at that time in the business of petroleum and gas development and production. Both men were men of substantial means, with some experience in that business, and the decision to take leases on this structure was not a decision which was reached by them out of the blue of the sky, but was reached by them as the result of certain developments which were taking place in and about these properties, and certain indications which had been existing that had been disclosed on the property for many years before.

Preliminarily, I might say that beginning in the years 1932 and 1933, a large number of gas fields of natural gas were discovered in Northern California, and I am going to refer to you for the purpose of this preliminary statement another map here on the blackboard, which is known as Blandsford's Map of the Oil and Gas Fields of California. The spots marked in green found on the map are producing oil fields throughout California, Southern and Northern, or Central part, and these spots marked in red are producing natural gas leases in California.

When we look to the right-hand corner of the map we have a section of the map which starts primarily with the Central portion and on up as far as Tehama County, of California. You will notice, ladies and gentlemen, that there are very, very few [6] green spots on that map, that portion of California, but there are some very large red spots. I might state that these red fields are producing gas fields in Northern California. There is the Tracy gas field, the Vernalis gas field. We have the fabulously rich Rio Vista field, and then we have Honker Bay field, here, and we have the Suisun Bay district, and the Marysville Buttes, up north.

The property of the Cal Bay Corporation and Joseph Faria, Jr., on which the well was being drilled, is represented by the spot over here, and south of the Suisun Bay, marked in yellow, and it is just approximately south of the Honker Bay development, which is across the river by the Standard Oil Company property, approximately between three and four miles away.

These leases which were accumulated by Mr. Hildebrand and Mr. Faria were taken by them not only because of the development of these gas deposits in and about the property, because in and of itself such a development would not warrant a reasonable conclusion that gas or oil would be found underneath the property of the Faria family, but there were other indications which made the property very promising, and those indications are gen-

erally the indications that geologists and petroleum and gas men look for when they go out prospecting for locations. I say, generally speaking, that the indications they would look for, among them would be the question: Is there any natural [7] seepage or outcrop which would indicate accumulation of petroleum on the property. That would be one indication. Another indication would be: Is there a structure on the property, and by a structure is meant what is generally known as a trap or a geological formation which serves for the purpose of trapping petroleum and gas and preventing it from escaping. It is simple for me to talk to you about a trap, but the experts will describe it to you in the course of the evidence. It is something that is very important in the accumulation or production of gas. In order to give you, ladies and gentlemen, an idea what might be a trap, I will refer to this map, here; you will find on the photostatic copy of the map, the black portion, you will find certain drawings in the form of an anticline with several stratas shown thereon, and then those certain formations to the right, here, with these over here. Those are what forms the trap. They trap oil and gas. I might say for the benefit of you ladies and gentlemen that a trap can consist of what we call an anticline. The anticline is a geological formation wherein as the result of a fold occurring in the earth's surface and the strata covered by a earth formation would be deposited there, there would be folded upwardly or

in some cases dug in this fashion, as shown on this area (indicating on map), and the structure is closed on all sides and serves as a trap where the oil and gas accumulate, and which can no longer escape until something happens, as in our case the tapping of the structure by the well. There [8] are, in addition to anticlines, many other different types of traps. We have traps caused by faulting, sliding of the earth, whereby the continuity of the formations would be interrupted, so the formation found on one side of the fault does not correspond with the formation on the other side. The interruption can cause what is known as an entrapment.

In addition to looking for these traps and the outcrop and seepage, geologists will look for the existance of sources of petroleum and gas by looking for the existance of sedimentary rocks, "Sedimentray" means, of course, exactly what the word implies, formations of rocks which have been deposited there as the result of erosion or sea bottom deposits. To determine or discover commercial accumulation they look for the existence of whole drainage areas and, of course, the reasonable contamination—the structure if it exists there will have been filled with a reasonable amount, commercial amount of oil and gas from the surrounding territory, in order for that to exist. They look for proper hydrostatic conditions to force this oil and gas into this structure, and at the same time not force it out. Then again they were looking for

conditions which are not antagonistic to the presence, naturally, of oil and gas, such as too much faulting, or metamorphosed rock. All of those formations geologists and petroleum engineers generally look for when they go out. Those exist and have existed, of course, for many years, for centuries, on the properties which are the subject of this [9] litigation, and in the course of the trial we will prove to you that over 25 years ago the property of Mary Faria, one of the defendants in this case, on that property there was caused to be drilled a water well for domestic use. The water was so contaminated by petroleum that it had to be abandoned. A few years later a well was drilled on another portion of the property. It was drilled down about to sixteen feet, and such a formation of gas came up that it was lighted and that well has continuously been lit up day and night for years thereafter, and is still in existence on the property. It was there when the Government took it over.

Incidentally, the evidence will disclose that the gas well, the gas seepage and the petroleum seepage were approximately 600 feet and 1500 feet, respectively, distant from where the geologists picked the location for the drilling of the Faria well.

Mr. Faria and Mr. Hildebrand, being both men of experience in this business, and having learned of the development of oil and gas fields all around the territory, and seeing these indications on the property of commercial accumulation, came to the

conclusion there was a reasonable probability or possibility, let's put it that way, that there was evidence of commercial accumulation on the property—Mr. Faria and Mr. Hildebrand then went around and got leases, and they got leases on practically what appeared to be the entire structure, [10] other than about 1700 acres of land which lies somewhat to the south, and is shown on this map, here, about right here, and it is called the Walter Keller property. That Walter Keller property lies within the general structure here but it happened that just when Mr. Faria and Mr. Hildebrand decided to go after leases on this property, the Standard Oil Company suddenly began to look with favor upon these various properties, and they went around offer leases to the Standard Oil Company. Then, after the Standard Oil Company drilled its Keller No. 1 on the property of Walter Keller down to about 4100 feet, it was subsequently abandoned for reasons which will be disclosed to you during the trial, reasons, as well contend and attempt to prove, reacted favorably on the property of Mr. Faria.

When Mr. Faria and Mr. Hildebrand got these leases together they took leases on about 2000 acres of land, about 2100 acres of land altogether. Among the lessors was the property of Mary Faria, of about 440 acres of land which extends just approximately as indicated to you here by this map, and upon which property was located this gas well and the abandoned water well which had been contaminated by petroleum. They took also two small pieces of

property in this Mary Faria piece known as Parcel 57 and Parcel 58. Parcel 57 is owned by Mae E. Dutra Roche, who is one of the defendants here, and Parcel 57 of about 5 acres is owned by Edward Faria. They are the children of Mary Faria, and these two small pieces of [11] land with Maria Faria approximates 450 acres of land on that particular piece of property, itself.

In addition to that, Joseph Faria obtained a lease from Manuel V. Alvernaz of approximately 310 acres of land, the property I am indicating to you now, and he obtained a lease from his own mother, Geraldine Faria, comprising 228 acres, approximately, which is Parcel 64 in this complaint. In addition to that there was a lease obtained from Ralph P. Bollman, of approximately 771 acres, which is the property that I am indicating here, extending this way and up here. The Keller property was taken by the Standard Oil Company, that is to the right and over here to the very southern most end of the structure.

The we have a lease by Joe Chavez, 414 acres of land, to Joseph Faria. That altogether approximates 2100 acres of land.

The Cal Bay Corporation was thereupon organized by a group of businessmen headed by Mr. Faria and Mr. John Knox, of Stockton, and other merchants, and to the Cal Bay Corporation there were assigned 687 acres of these leases, consisting of the property of Maria Faria, Manuel Alvernaz,

Mae Dutra and Edward Faria, and of this Mary Faria property 73 acres were kept out of it by Joseph Faria, located up here, 73½ acres from the Mary Faria property, all of the Geraldine Faria property, all of the Ralph Bollman property, here, and all of the Jose Chavez [12] lease, and the Cal Bay Corporation received what appeared to be the very top of this structure, consisting of about 687 acres, which in the oil business is sufficient to warrant the drilling of a wildcat well.

With that having been done, Cal Bay Corporation went before the Corporation Commissioner in the year 1942 and obtained a permit for the sale of 50,000 shares of stock at \$1 par. The sale of stock was made. The \$50,000 was raised, and I forget exactly the date, but sometime in the month of July, 1943, or thereabouts, the drilling of the Faria Well No. 1 was commenced.

Mr. Hildebrand and Mr. Faria did not pick the location for the drilling of the well. They were not men possessed of that much experience. But before they would spend any of their money and their people's money, they went and hired a geologist and petroleum engineer, whose reputation, in the judgment of his colleagues, is second to none, Mr. Byron Norris, who was formerly connected as petroleum engineer and geologist for the Corporation Commissioner of the State of California and who has done a large amount of work studying structures and making geological reports and investigations for

petroleum and gas companies. Mr. Norris came up to these properties and spent several weeks in studying all the formations, all the indications, the seepages and the structure that I have told you about, taking measurements of the dips to ascertain whether or not an anticline or a closed structure existed there, and primarily for the purpose of studying all of the wells drilled on the surrounding gas fields that I have told you about, to determine the nature of the formations found there and then ascertaining whether or not the formations which were found on the gas fields producing around the Cal Bay property could reasonably be expected to be found also on the property of Cal Bay Corporation, and after many weeks of work, Mr. Norris came to the conclusion that this was a closed structure and that the geological basis of it was favorable for the accumulation of petroleum and natural gas, and that the [13] cost of drilling the well to the formation which he expected to reach wherein the accumulation would be found productive would not be exorbitant, and he recommended to the Cal Bay Corporation that a well be drilled on the property of Mary Faria, approximately six hundred feet from where the gas well had been drilled twenty or twenty-five years before and had been draining all those years.

At the same time he reported that in his opinion the property owned by Keller was unfavorably located for commercial accumulation, and on the basis of that report, Mr. Joseph Faria did not bid

against the Standard Oil Company and allowed it to take that portion of the structure.

Now, the well started and went along. It had the usual troubles you will ordinarily encounter in the drilling of any wildcat well. We, of course, were engaged in a war. Materials were hard to get and men were hard to get and, of course, the cost of drilling a well under those circumstances would be a little higher than normally would be found. But the drilling proceeded according to expectations. Cores would be taken of the formations penetrated at regular intervals, and those cores would be checked by Mr. Norris and paleontologists, specialists in their lines, for the purpose of ascertaining the formation through which the bit was drilling and correlating those formations with the formations found in a producing gas field like McDonald Island, Rio Vista, and the rest of them, [14] and it was found that the geological sequences of these formations were normal in every respect, which was a very good indication to Mr. Faria and to Mr. Norris, who was the supervising engineer in charge.

It so happened that when the well reached approximately forty-three hundred feet in the month of October, 1943, very strong indications of natural gas began to appear in the course of drilling the well, and those indications manifested themselves in gas appearing in the mud which was coming out of the well as a result of the drilling and shooting up in the ditch, and also the shale would surge and heave up and down, and the pressure would in-

crease. Now, it became so prominent and so strong that it was decided to make certain tests which are ordinarily made in the course of drilling these wells, and the tests which were made in this case were the running of what is called Schlumbergers—they are technical tests which the experts will explain to you—a temperature survey was made, another technical test, and then certain formation tests were made, the Johnson formation tests, and all those tests had for their objects the determination of whether or not the formation from which these indications of natural gas were coming to the surface was capable of being placed on commercial production, and which was ascertained as the result of two Johnson formation tests. 100,000 cubic feet of gas per day was the result of one of those tests. There were three Johnson formation [15] tests, altogether. In the third test made October 27, they received indications of 125,000 cubic feet of gas per day, and it was determined at that time that that would not be sufficient to warrant placing the well on production at that level, but because of the developments which were going on all around them, especially the bringing in by the Standard Oil Company of the field at Suisun Bay and Honker Bay just across the river from Cal Bay Corporation, and as a result of the abandonment by Standard Oil Company of the well on Keller Hill and a study of the logs of all these wells correlated with the well being drilled by Mr. Faria and the Cal Bay Corporation, Mr. Norris concluded that the formation which would be productive of natural gas in

commercial quantities in the Faria well, judging from the logs of the wells in the surrounding field, would be found at approximately forty-nine hundred feet in depth or approximately five hundred feet deeper than where they were at that time. This was some time in the month of November 1943.

Winter was coming along. The corporation had spent all the money which it had accumulated for the drilling of the well, and so they decided to suspend drilling operations for a few months until they were able to raise some more money and get together additional material and equipment to continue drilling. Cal Bay Corporation had to go before the Corporation Commission and receive additional permits for the sale of stock, which [16] was done in the spring of 1944; the necessary crews and equipment were gotten together and on July 8, 1944, the well again started to be drilled and drilling went along gradually and methodically, according to schedule, until July 25, 1944, when out of the blue of the sky an order came from this Court directed to the owners of this property and to Cal Bay Corporation, stating that the properties upon which this well was being drilled was part of the property sought by the United States and ordering, of course, that the United States be placed in possession of the property. Among the properties so sought were 210 acres or thereabouts, of the Mary Faria lease, including the very location upon which the well was in the course of being drilled, as was also all the property of the Edward Faria

lease, the Mae E. Dutra Roche lease, and all the property, other than about forty-nine acres, of the Bollman lease, and practically all of the Joe Chavez lease. The order did not include the property of Geraldine Faria, except a small piece of about a half-acre, and did not include the Manuel V. Alvernaz lease, but inasmuch as it did include the property on which the well is being drilled, it became necessary to stop operations and ascertain, Where do we go from here?

I am going to beg your indulgence, ladies and gentlemen of the Jury, if I seem to be dragging this out a little longer than ordinarily, but the matter is of sufficient importance [17] to warrant my taking a little longer to bring you up to the very end of the situation.

As soon as this order was served on the Cal Bay Corporation it retained the firm of Fitzgerald, Abbott & Beardsley, of Oakland, to represent them, and Joseph Faria and Mr. Norris sat down with the representatives of the Navy, which had sponsored and asked for the condemnation of the property, and held some conferences with them at Mare Island and San Francisco, and placed before them the results of the drilling of the well up to that time and their recommendations and expectations, and as a result of those conferences, Commander Ernest E. Williams, acting for the Commandant of the Naval District, on or about August 15, 1944, wrote a letter to the attorneys of Cal Bay Corporation, wherein and whereby substantially they agreed to

permit Cal Bay Corporation to continue drilling this well for an additional 2,000 feet, provided that it could be completed within a certain time. We will prove that the letter never fixed any specific time. I assume it meant within a reasonable time. But in reliance on that letter of authorization, Cal Bay Corporation went out and got together enough men from all the oil fields of California and put on three crews and worked three shifts a day, and went out and bought about six thousand feet of casing and started to drill, and continued drilling until December 15, 1944, and on December 15, 1944, it received a notice to get out of the property within thirty days [18] and to abandon the well.

Now, in and of itself that would not have added anything to the developments prior to the condemnation suit, but it so happened in between August 15, 1944, and December 15, as the result of the continued drilling of this well, when it got down to 4,973 feet, a tremendous volume of gas began to come out of the well. It appeared on the ditch. Buckets of sand could be picked out of the ditch. And by applying a match to that sand it would burn brightly, and the pressure of the gas was pressing the mud to the point where it could not be kept under control, and Cal Bay Corporation had to go and hire a specialist from the Baroid Sales Division of the National Lead Company to come up and build up their mud to a weight of 115 pounds per cubic feet. That is a rather technical situation which will be explained to you by the experts. Prac-

tically speaking, it means that when you build up the mud which is used for the purpose of cementing off the well, as you drill down to a weight of 115 pounds per cubic feet, it means that for every foot of mud in that drill pipe of 4,973 feet there was a weight of 115 pounds per cubic foot, that weight was necessary to keep the pressure of this gas coming up from underneath under control, and still it was not enough to do so, and this well on November 29, 1944, at about eleven o'clock a.m., blew in with a tremendous volume and roar of gas that scattered petroleum all over the derrick, and at the end of two hours it [19] was brought under control.

Now, the result of the well blowing in that way collapsed the casing, and in trying to get into the casing for the purpose of continuing the drilling, it was found that the drill pipe would not go through and that circulation could not be regained, and so they went out and hired another specialist from down south to come up here and see if they could not start the job. Mr. W. C. Bradford was hired for the purpose of trying to find what happened to this casing. They found the casing had collapsed at about the forty-one hundred foot depth, at the very place where a window had been built out of it some time previously for the purpose of whipstocking the well to get down to this new depth. "Whipstocking" is a technical operation which will be explained to you by the experts, but it suffices to say that Mr. Bradford was not able to get through this collapsed casing. This was about the end of

November, 1944, and as I said before, on December 15 the Navy served them with notice to get out within thirty days, and in the meantime, to abandon the well that they were drilling, which involved another extraordinary expense.

In the course of the trial it will be disclosed to you that the Navy, acting through the plaintiff, acting through its attorneys of record, stipulated with my clients that the date of the taking of possession of Parcels 58 and 59 pursuant to that stipulation should be the date fixed for fixing the [20] compensation, and in this case the possession of Parcels 58 and 59, which is the Mary Faria property and the Mae E. Dutra Roche property, or, rather, Edward Faria, in January 15, and January 15 is, of course, subsequent to that blow of gas which we had on November 27, 1944, which we contend establishes for a fact that the commercial accumulation of natural gas in the property of Mary Faria, and we are here today to establish to your satisfaction what we consider to have been the fair market value of those leases on that date, and we respectfully submit and we will strive to prove to your satisfaction that we had established a discovery of natural gas on these properties, and that these leases owned by Cal Bay Corporation had great value, and in that respect I might state that Cal Bay Corporation claims the following in its answer to the complaint:

Of the 687 acres held by it under lease—not all of it was taken by the Government, but as to the

portion which was taken by the Government—Cal Bay Corporation claims that the fair market value of that portion, which is the portion of Mary Faria, Dutra, and Edward Faria, and a small piece of Geraldine Faria, including the value of the improvements which had been built on the property, in this case the well, was \$468,750. In addition to that, it claims that its leases on the remaining property not taken by the Government were rendered of less value than they would have been had not the Government taken the portion actually taken by it, and that [21] that damage it estimates to be \$150,000, so that the total amount claimed by Cal Bay Corporation in this case is \$468,750 for the property taken, and \$150,000 damages for the property not taken.

Joseph Faria, Jr., claims that the value of that portion of the lease taken away from him, which includes about 73 acres of the Mary Faria lease, and about 139 acres of the Ralph Bollman lease, and some of the Joe Chavez property, had a value of \$38,750, and that, as to the remainder of the property held by him on the lease and not taken by the Government, which consists of 49 acres or thereabouts of the Ralph Bollman lease and the Geraldine Faria lease, was damaged in the sum of \$31,850.

In addition to that, the lessors, Mary Faria, Mae E. Dutra Roche, and Edward Faria, claims that the royalties which had been reserved by them in their leases were the equal of one-eighth of all natural

gas and oil produced, saved, or discovered on their property, that that royalty interest was worth on the date of the taking, in the case of Mary Faria, \$75,000 and that the damage to her royalty interest in the property not taken was of the amount of about \$35,000, or a total of about \$105,000.

In the case of Edward Faria and Mae E. Dutra Roche, respectively—all of their land was taken by the Government—in each case approximately five acres, and each of them claim [22] the value of their royalty interest in those 5-acre parcels to have been the sum of \$3,500.

We will now proceed to disclose to you, ladies and gentlemen, the facts upon which we predicate our claims in this case.

The Court: Do you wish to make an opening statement, Mr. Bourquin?

Mr. Bourquin: I would like to make a statement, your Honor. I would like to make it now. It will take me about fifteen minutes.

The Court: We will take the afternoon recess first. Ordinarily, ladies and gentlemen, we take a recess in mid-morning, during the period when a case is on trial, and another recess in mid-afternoon. We ordinarily hold court from ten o'clock in the morning until noontime, and then reconvene at two o'clock in the afternoon, and hold court from anywhere between four to four-thirty, occasionally a little later, if it is necessary to dispose of a witness. We take these recesses in the middle of the morning

and in the middle of the afternoon, because experience has taught us that jurors as well as lawyers and the judge sometimes get a little weary of sitting in the same place for too long. Sometimes tempers get a little frayed, and the five or ten minutes we take off we find in the long run is productive of the best results. During these intermissions that we have, it is the duty of the Jury not to converse among themselves nor to permit any other person to address [23] any member of the Jury upon any subject connected with the trial of the case, nor to form or express any opinion concerning the case until the case is finally submitted to the Jury for decision. We will take the afternoon recess at this time.

(Recess.)

The Court: Mr. Bourquin, attorney for the United States in this matter, wishes to make an opening statement on behalf of the Government.

Mr. Scampini: If your Honor please, I have given a copy of this map to counsel on the other side. It may be that your Honor will want to follow it. It is one of the maps on the board.

Mr. Bourquin: If your Honor please, and ladies and gentlemen, I thought that the gentleman on the other side had, wittingly or unwittingly, laid an unnecessary amount of stress on the complexities of this case, so as to preface my own statement I shall offer to you the view that if we get down to the facts of the matter, the case is not very com-

plex. I think if we will, as his Honor will charge us here to, direct our attention to the property in question and search for its market value, which you must fix, we will find it more simple than has been outlined. I do not think we can do that by attempting to appraise the property at Rio Vista or over at Tracy or by what academic studies would tell us the property [24] ought to have contained, but I think we can do it under the circumstances here if we get right into the property, as the defendants themselves admit they had done, and deal with the facts as they were found. In other words, I think it is a property that has to be analyzed and appraised, not from the surface of the ground as if that were unbroken, but from the standpoint of what lay underneath. They admit to you they had explored the ground to a depth of 5,000 feet. If there is any theorizing to be done to substitute for facts, let us get down to the 5,000-foot level and start theorizing from there. It can be just as readily done, more easily done, in fact, than if we were to shut our eyes to the fact that the property has been explored and treat it as if it lay off in Alaska somewhere, where it had never been touched by a drill or a pick.

At the outset, I think it would be well that it be made plain the Government here is not now and was not in the institution of this proceeding attempting or seeking to acquire any oil or gas. It was not seeking any oil or gas or other mineral reserve. It was not seeking and had no use for any

oil or gas right or any oil or gas, even by the bucketful, and I want to say to you, to clarify the matter at once, that the Government upon the data submitted to it by the defendants, and additionally by independent studies which it caused to be made, not by Government men, if we are going to hold them suspect, but men [25] not in the Government service at all, is convinced that there is not any oil or gas in the said properties, the subject of this suit, except in token quantities, such as you may find throughout the north bay area, up the Sacramento Valley, nearly anywhere. It does not believe but is convinced that there is no oil or gas in the subject properties that would possibly pay the cost of producing the same.

These properties, the subject of the suit, constituting five parcels, and as the gentleman has correctly said, aggregating about seven hundred acres, or thereabouts, are properties that lie back in the hills from Port Chicago. Some of you East Bay people will identify them more readily. They are properties which lie back in the hills which the Government sought and took by the process of eminent domain. We call it condemnation. That is a devil of a word, but it means only that the Government is requiring the owner to sell it because the Government has to have it. It is a sale with a different element in it only that the owner must sell now, when the property is needed. These parcels were a part of, I think, 5,400 acres of the property back in those hills which was taken and

for which suit was brought on the date counsel mentioned in July, 1944, to provide a safe storage place for the ammunition and explosives that were being shipped and would be shipped to the Army and the Navy in the course of the war in the Pacific from the shipping port which had been established [26] the year before. You will recall that, because a loading ship blew up at the dock over there and raised the devil around Port Chicago, a loading port which had been earlier established. These properties were to provide the warehouse behind that shipping port for those purposes.

The matter of these 5,400 acres reminds me of the annoyance—and I can sympathize with it, because I have seen lots of instances of it—that the lady who sat here the other day spoke about. Her property was taken some years ago and for some reason or other she has never been paid for it yet. But of the 5,400 acres in this case, this interest encompassing 700 acres is all that remains. I think the rest has been settled out with the exception of a few, the owners of which came into this court and Judge Goodman settled their interests for them and disposed of them, and I think—I was going to say I hope by this time all have been paid.

In this case the Government made an appraisal of all 5,400 acres through San Francisco and Oakland real estate appraisers. I think the average price over that whole area averaged around \$175 or \$200 an acre. Some properties ran much higher

than \$200 an acre. Some properties have run down below \$100 and some favorable properties ran much higher than \$200. I think it is proper to state that out of the whole 5,400 acres none of the other numerous owners of all the other properties asserted any oil or gas claims except these three, which they are entitled to assert. In the [27] case of these properties, so we will have the issues defined, the properties in a real estate sense have been paid for. In other words, along with the others the various people, the group, as I term them, represented here, which includes all except Mr. Bollman, and Mr. Bollman's claim has been settled out because his was one which was settled by the Court and did not claim any oil or gas values—in these properties the Faria people settled with the Government and have received their money for the value of the property as real estate. Apparently there was no difference of opinion there. Stipulations were signed and filed. But they asked, and the Government agreed, that they might reserve the right to assert the claim of oil and gas values, and it was agreed, "We will close up the real estate and that is left." So by that process there was left in this case only the mineral, the oil or gas values, if there be any, in these particular properties, for determination; so that when we come and you come to appraise the evidence and to appraise the value, you will be appraising only the value, if any, that was in those properties additional to the real estate and repre-

sentative of what they were worth for oil or gas developments.

I want to say just a word about the history of the property, because I think the history of and property is interesting in ascertaining its merits and its values. As Counsel has stated to you, some time in 1941 Mr. Faria, one of the Faria's took [28] leases on these properties, mineral, oil and gas leases. In 1942 or thereabouts, they incorporated the company, the Cal Bay Corporation, a stock company. I think it was said that they had issued stock in the sum of \$15,000 at first, and in the sequence of recital they had later gotten the geologist's report, but I believe the facts will show you, and I would assume and you would assume that is the only way a corporation commission would operate to allow people to go out and sell stock, that they got the geologists report first. He wrote them his analysis of the potentials of the property—unexplored, mind you, and this is in 1942—and with the aid of that before the Corporation Commissioner, they obtained leave to issue and sell stock, and stock was issued and sold, and in 1943 Mr. Faria brought his own rig to the property from Santa Cruz, I think, where he had drilled a while earlier, and by arrangement with the Corporation Commissioner they drilled from a time in July until a time in October—and I think the drilling operations will almost exactly amount to three months—they drilled 4,375 feet in three months, or

something like 1,500 feet a month. As they got down into the depth they encountered gas signs. They encountered heavy pressures. Gas fulminated up in their circulating mixer that they call mud from the hole and appeared on their ditch, and they encountered that not once, but either two or three times, so when they had reached the depth of 4,375 feet they pulled out, cased [29] the whole depth, put the casing in, which would be putting in a sleeve of concrete-reinforced metal in the whole, and when that was done they brought in the scientific tests that he mentioned and they made tests, they had gas alright. They made repeated tests, once in October, and then they perforated their casing in another place and made a new series entirely and they obtained on instruments that the experts say are quite reliable test results of 100,000 cubic feet a day in one instance of gas and in a later instance I believe that was higher. I think they came up the casing and made another series. They shoot that casing like you would with a pistol. It has a series of valves around it like the fingers of your hand. I am offering this to somebody who does not know anymore about it than I did when I started studying this case. They shoot holes through it with bullets. When they have their avenue through they insert instrument. Mud is lifted off with their tackle, a plug. They make their tests and they get what is there. They got at the 4,375-foot level 100,000 cubic feet of gas at one time. That is the volume per day. They got 125,000 cubic feet another time. In order that we may

know what that would mean, I think it is fair to say that it will appear even today at a better time that gas would sell at the well head to one of the pipeline companies, if they would come in and tie it in, for 10 cents a thousand cubic feet or, in other words, the first test there of 100,000 cubic [30] feet per day showed that they had gas that they could sell for \$10 a day, and that on the subsequent tests a few days later, when they improved it, they found that they had a gas that would sell for \$12.50 a day, 125,000 cubic feet.

Well, the scientists went home. They quit. They said they suspended. That was October 27, 1943.

In 1944, as was told to you, the Government went in there and instituted this action to provide this explosive storage yard.

The Judge of this Court made an order at the time the Government went in, as in the case in all condemnations, to serve the public necessity, requiring all the defendants, not just the Faria group, but all the owners in the 5,400 acres, to surrender up the property in the Government and allow it to be put to public use, and to come to court if they could not come to terms. That is the procedure. You know that. When that order was made the Faria people appealed to the Government authorities in charge there for an opportunity to explore further, or I will put it in my version, to see if they could not show some value, and they went along with their exploration.

Now, I believe it to be the fact that will appear

that they had gone back to that well and resumed the exploration on July 8, 1944. That was before the Government's right to possession or the Government's action was instituted. From that [31] date, July 8, 1944, until January 15, 1945, six months and seven days, they made exactly 600 feet further progress ahead down, or approximately 100 feet a month. In the course of that they found more gas fulminating up on their ditch, heavy pressures like they were in 1943, were again reacted. I think the similarity of those signs in 1943 and 1944 will have a bearing. And in that respect the cores were about the same as the 1943 cores, except, of course, we must not forget the differential in the rate of progress made. But it will appear in that exploration of 1944, during those six months, everything happened to them that should not have happened. Everything that an oil man could think of that should not have happened on that operation happened to them. They stuck their drill pipe that rotates in the hole repeatedly. They pulled it apart at a depth on one occasion, were unable to recover the bit and the collar in a lower piece, had to back up from where they were then at about forty-eight hundred feet to where they had started in July at 4,375 or thereabouts and cut a window in that casing they put in there before—and when I say “cut a window”, they leave a portion in the bottom that they could plug up to, shut off the hole that has been messed up at the bottom. and then above that

plug they will go out of the old casing down on a tangent using what the oil fellows call a whipstock, just so they can go ahead. They can't go through that part which has been messed up. They went down [32] there. I think they found their signs again about the same level they had. They stuck the pipe again. They closed the well down repeatedly for a matter of days. One time it was down for more than twenty days, just closed. It will take the men who have the knowledge of these things to explain it to you, but as an accumulation of those things their mud—that is the circulating fluid—degenerated, backed up. They did not control it with their mud. They did not control the gas and salt water seeping in. It backed up, and finally, on November 29 it kicked out at the top. It kicked mud up on their derrick, kicked mud out on their ditch, and they found gas fulminating through that mud. They had found it before. Then, as counsel said, it took two hours to bring the well under control. I think there was a time in 1943 when they had trouble with their mud. It took them about five days to bring it under control again, bringing it under control and regaining their circulation. This pipe is not left down there. You bring it out periodically to sharpen the bit on the end of it. They were attempting to free the pipe in any event. The pipe was not on the bottom at the time this mud blew out on November 29. It had been pulled up and stuck, was damaged a couple of hundred feet off the bottom.

They were not at the bottom of the hole they were making then. They were 200 feet above. When they went to attempt further to free the pipe they found they could not get any pipe above that window [33] The pipe was thoroughly stuck at the window. This, I think, was a matter that developed with them on the 29th, 30th or 31st. From then until the 15th, I suppose it is fair to say—the Navy had taken a pretty good kicking around here—they had some discussions with the Navy about what they were going to do. Mr. Faria didn't know what he wanted to do, because he couldn't say how much time he could do anything there. The Admiral at Mare Island told him, "We gave you an open stipulation. We have to have you out. We agreed with you to give you thirty days notice when we let you go ahead. Now we will give you the thirty days' notice and you fellows will have to turn over to us on January 15."

There was no further effort made on their part—well, I think there was an effort made by them to free that pipe and recover it by the use of heavier pumps than they had been employing there at the time on the 29th and 30th, but except for that there was no way to do anything, to cut any new hole or do anything with it, and on January 15 they were out.

I do not mean in outlining these facts to you that we want to advance to you any opinion or attribute any design or anything else. We want you to draw your own conclusions from these facts. So far as the questions of value go, these people have been

paid and fully paid—they were satisfied—on the same basis that everybody else up there has been paid. They believed, or at least, they contended and they say they [34] believed they had something else in the ground they wanted to evaluate. I suppose it will appear that for a matter of a few years up there, there has been wildcat speculating—not speculating in the sense of some broker coming in and tying up leases all around there, oil and gas leases. It may be anyone must conclude that the property, even after the 1943 exploration, which their own tests disproved, would say somewhere—not the place where the hole was drilled—there was property that still had some speculative value in the market. If they did, they are entitled to it, but as I said to you at the outset, I believe, and we want, if we can, to confine ourselves to these facts, that there is no reason, none has been shown, and I have not heard any stated, I do not believe, here today, to believe that those properties, after the full exploration that was had there, have any oil or gas possibilities that would justify anything but the purely speculative value which someone who might come in your yard and tell you, “We hear a rumor that your land is valuable. If you will let me tie your property up for a year, I will give you one-eighth of anything I can get out of it.”

Thank you for your attention.

The Court: Do you wish to call your first witness?

Mr. Scampini: Mary Faria. [35]

MARY FARIA

called as a witness on behalf of the defendants; and being first duly sworn, testified as follows:

The Clerk: Will you state your name to the Court and Jury?

A. Mary Faria.

Direct Examination.

By Mr. Scampini:

Q. Mrs. Faria, where do you reside? Where do you live?

A. I live—do you mean my place—

Q. Just give us your address?

A. The address? Excuse me. Excuse me.

The Court: She lives in California some place?

Mr. Scampini: Yes.

Q. You live over in Concord, don't you?

A. Yes, Concord.

Q. How long have you been living there, Mrs. Faria? A. Forty-six years.

Q. Are you the owner of some property over in the hills above Concord? A. Yes, sir.

Q. Are the properties which you own over there the properties which are subject to a lease to Mr. Joseph Faria? A. Yes, sir.

Q. When did you acquire the property, Mrs. Faria?

A. Forty-six years ago I lived there. That was my home.

Q. You lived there with your husband?

(Testimony of Mary Faria.)

A. Yes, sir.

Q. Your husband was named Antone Faria?

A. Yes, sir.

Q. And you raised your family there, did you not? [36]

A. Yes, sir.

Mr. Scampini: I am wondering counsel, if you going to expect me to prove the origin of the title of these properties?

Mr. Bourquin: Oh, no, not at all. I do not think we need spend any time on that. The only question we ever raised at all on the matter, your Honor, was the question that we raised when we were troubled with the problem of the method of proof here, but I am not so sure as to that yet. I do not think we need spend time on these leases or anything else. We are dealing with one property. Go right ahead and we will save time. [37]

Mr. Bourquin: Yes.

Mr. Scampini: I show you here lease of August 11, 1941, I will ask you to look at the signature which is found here.

Mr. Bourquin: That is just what I meant to say. We will stipulate with you, if you want to stipulate, in regard to the effectiveness of the lease from Joseph Faria to Cal Bay; for the purpose of the case, we will stipulate to that.

Mr. Scampini: Yes.

The Court: Do you wish that stipulation, counsel?

Mr. Scampini: Yes. I just want to identify the

(Testimony of Mary Faria.)

lease for the purpose of asking a question in respect to some developments on the property.

The Court: The lady will understand it better if you will just tell her that such a lease was made on such and such a date by her to the corporation—is that it?

Mr. Scampini: Yes.

Q. Mrs. Faria, did you on August 11, 1941, execute a lease to approximately 441 acres of land owned by you to Joseph Faria, Jr.?

A. Yes, sir.

Mr. Scampini: Now, I offer in evidence, may it please the court, as our exhibit first in order, the basic lease by Mary Faria dated August 11, 1941.

Mr. Bourquin: If you think it is necessary, we have no objection to it. As I said before, we won't raise any question [38] of the fact that Mrs. Faria is the owner of, if you will identify the parcel and the lease on the property, if it was to Joseph Faria, and if it was to Bud Hildebrand and was subsequently transferred to Cal Bay Corporation by them, we won't make any question on that.

Mr. Scampini: Let's proceed along that line. I will ask the record disclose that on August 11, 1941, Mary Faria, a widow leased to Joseph Faria and Bud Hildebrand that certain real property lying in the County of Contra Costa, State of California, being Lot 2, Section 21, Township 2 North, range 1

(Testimony of Mary Faria.)

West, containing 38.72 acres more or less; portion of Lot 1 and southeast quarter of northwest quarter of Section 21, Township 2 North, Range 1 West, containing 76.64 acres; south one-half of northeast one-quarter of Section 21, Township 2 North, Range 1 West, and West 12 acres of south half of northwest quarter of Section 22, Township 2 North, Range 1 West, containing 92 acres, and Lot 3 and fractional southeast corner of Section 21, Township 2 North, Range 1 West, containing 155.51 acres more or less, and the north half of northwest quarter of Section 21, Township 2 North, Range 1 West, containing 80 acres more or less, and containing 440.87 acres in all.

Q. Now, Mrs. Faria, when did you acquire this 440 acres that you leased to your nephew, Joseph Faria, when did you buy it? A. 25 years ago.

Q. When you bought that property did you know anything about [39] the drilling of any well on that property?

A. Well, at the time I bought that place the neighbor of mine, there is a well here, and every time I went over and I tried to drink the water the water taste like kerosene, and we never used the well any more.

Q. What happened to that well?

A. It is there. We never used it.

Q. When you bought the property did you notice

(Testimony of Mary Faria.)

anything peculiar about a certain place on the property? A. Yes.

Q. What did you notice?

A. Well, same place they are all dry, nothing growing, and all burnt up around the place by the house there.

Q. What did you do when you noticed that?

A. Well, my son tried to find some place to drill. They found some gas there.

Q. They found gas there. How many years ago was that done?

A. Maybe 25 years ago, I think.

Q. What was done about that well, what did you do? A. Well, which one you mean?

Q. The gas well.

A. Well, my husband and son drilled and put a little case there, and started burning gas.

Q. How long did it burn?

A. It burned all the time if you don't put it out.

Q. Was it there when you made the lease to Joseph Faria, Jr.?

A. Yes, it was there for years.

Q. Did you have any negotiations with any oil companies before [40] the making of this lease to Mr. Joseph Faria and Bud Hildebrand about leasing the property?

A. Yes. Some people went there and asked for it, and after Joe got the lease three fellows was

(Testimony of Mary Faria.)

there, want me to break the lease for three months, and I didn't get the fellows' names.

Q. Do you know what companies they represented? A. I think it says Shell.

Q. Shell Oil Company? A. I think so.

Q. Mrs. Faria, after the lease was made by you a well was drilled on the property by the Cal Bay Corporation, was it not? A. Yes.

Q. Do you know anything about that well, yourself? A. What you mean?

Q. Did you watch the drilling of the well, Mrs. Faria? A. Oh, sometimes.

Q. When the Government filed the condemnation suit did you have some negotiations with the United States Government, the plaintiff in this case, concerning the payment to you of the value of your property? A. When?

Q. You had some negotiations, did you not——

The Court: Why don't you ask her if she talked with someone? She doesn't understand you.

Mr. Scampini: Who conducted the negotiations with the Government about the payment to you of the value of the property, was it you, or your son?

A. We, altogether. [41]

Q. Altogether? A. Yes.

Q. In the course of those negotiations you met agents of the Government, did you not?

A. Yes.

Mr. Scampini: It is true, is it not, Counsel, that

(Testimony of Mary Faria.)

the stipulation to which you have referred is a stipulation whereby the fee or title of the property which is embraced in parcel 59 was taken by the Government subject to a reservation by Mrs. Faria of the value of her royalty interest as derived by the lease?

Mr. Bourquin: Any oil or gas interest that might be contained, yes.

Q. (By Mr. Scampini): Have you any opinion as to the value of the royalty that you reserved in the lease of July 22, 1944?

A. I don't know what you say.

Q. Do you know what the value of the royalty of that gas under the lease was on July 22, 1944, when the suit was filed by the Government?

A. I think it was one-eighth.

Q. You had a one-eighth royalty? A. Yes.

Q. Have you any opinion as to how much that was worth on the day when the Government filed the suit, how much it was worth in dollars?

A. You mean in the place?

Q. Yes, on your property.

A. Well, I thought \$110,000.

Q. You figured how much? A. \$110,000.

Q. Did you figure the value of your royalty at so much per acre? A. Yes. [42]

Q. How much per acre did you value your royalty? A. That is hard for me to say.

Q. Did you have any conversation with anybody in the business about the subject of your royalty?

A. Well—

(Testimony of Mary Faria.)

Mr. Bourquin: Doesn't that call for hearsay?

Mr. Scampini: I suppose so, your Honor, I will withdraw the question.

The Witness: Well, I just have to——

The Court: Well, aren't we going to get the testimony from experts?

Mr. Scampini: All right, your Honor.

The Court: While it is true an owner can give the value, I think this little lady is unnecessarily being put to too much by way of an actual test.

The Witness: Thank you.

Q. (By Mr. Scampini): After the making of the lease with Joseph Faria, Jr., did you have anyone come to you and ask you for a lease on the property? A. I did.

Q. Who came to you?

A. Well, some fellow, but he didn't tell me the name.

Q. How long after you had made the lease to Mr. Faria did this man come to you?

A. Not very long; a few months after that.

Q. Not very long. Have you been paid by the Government for the value of your mineral rights, Mrs. Faria? The answer, of [43] course, is no.

Mr. Bourquin: Well, that is what we are here for.

Mr. Scampini: That's right. That is all. You may take the witness.

(Testimony of Mary Faria.)

Cross-Examination

By Mr. Bourquin:

Q. Mrs. Faria, you and the Government people settled your differences except for the value of whatever oil or gas was in the property; is that right? A. Yes, sir.

Q. If you don't understand me, will you tell me?

A. Yes. You mean the Government paid me for it?

Q. You did get paid, is that right?

A. Yes.

Q. But it was understood that that would leave you a right to be paid if you could show that they had an oil and gas value in the ground?

A. That's right.

Q. That is correct? A. Yes.

Q. You told us you have been on the property—

A. 25 years before that. 45 years I live there on that place, you know; 45 years that is my home. I live there 45 years on the place.

Q. Do you recall one time when they sank a water well there and you tasted something like oil in the water?

A. Yes. The neighbor never used that.

Q. That was done on the property?

A. Yes, 25 years ago.

Q. Another time when they sunk another well you observed it apparently had some gas and they put a match to it, and lit it?

A. That's right.

Q. It would burn?

A. It burned for hours. [44]

(Testimony of Mary Faria.)

Q. Did you use it? Did you make some use of it?

A. Just—it burned over the place when the fellows got there.

Q. They saw it, and they saw it would burn, but you did not try to use it, put it to any use?

A. Well, it was enough to use it, but we never went to use that.

Q. You did not try to bring it in the house and cook with it? A. No.

Q. By the way, have you ever before had any experience with any property, supposedly oil or gas property, any other property?

A. Just mine there.

Q. Just this one here?

A. Just mine, there.

Q. Did you ever buy or sell any oil or gas interests at all? A. No.

Mr. Bourquin: That is all.

Mr. Scampini: That is all.

EDWARD FARIA,

called as a witness by defendants; sworn.

The Clerk: Will you state your name?

A. Edward Faria, Route 4, Box 493, Concord.

Direct Examination

By Mr. Scampini:

Q. Mr. Faria, you are the son of Mary Faria, who has just been on the stand?

A. Yes, I am.

Q. Your mother sold you, or, rather, gave you

(Testimony of Edward Faria.)

a deed of gift to a piece of land consisting of five acres, and being part of [45] her own property, Parcel 58 of the complaint? A. That's right.

Q. You made a lease to Joseph Faria, Jr., and

A. That's right.

Bud Hildebrand, for oil and gas, did you not?

Q. You made a lease to Joseph Faria, Jr., and Bud Hildebrand for oil and gas, did you not?

A. That's right.

Mr. Scampini: The lease, may it please the court, which I now ask to be deemed part of the record, is the lease dated August 11, 1941, executed by Edward Faria, to Bud Hildebrand and Joseph Faria, Jr., containing and describing portion of the southwest quarter of the northwest quarter of section 21, containing 5 acres more or less, and which is one of the oil and gas leases on Form 86, referred to in that complaint and concerning which I shall offer further evidence later on.

Q. Mr. Faria, at the time that you made this lease had you had any indications on your property of the existence of any oil or gas there?

A. Yes.

Q. When did you first observe those indications?

A. Well, in 1920 when my dad bought that place.

Q. Will you please tell what was done?

A. Well, first thing we did, we built some water wells and there were some spots on the side of the hill where the vegetation does not grow but to a certain height, about three inches, and it dies out, and around the other spots it grows to its normal height. So we got curious. I thought we would dig

(Testimony of Edward Faria.)

a hole there one day with a pick and shovel. I got down to about the height of the [46] handle, and I struck gas pockets in the hole. My dad decided for me not to dig any more on account of I might cause a spark and cause an explosion, so we let that go for about two years and my sister wanted to build a home, so I went ahead and drilled her property. We went off about a hundred feet on the side of those spots and we drilled a well, and we hit water there, but couldn't use it.

Q. Why?

A. On account of the petroleum that was in the water, the smell of it. We started out again and went down to the corner of the field and drilled for water and got plenty of it. So about two years after that we decided to drill in the spot with the well burning outside. The first well we drilled caved in on us, so we moved over about 20 feet, and made another one, and cased it. We struck gas. I replaced the casing to a small pipe, about one-quarter inch pipe, and it would burn a flame up to 18 or 20 inches high. I had it burn in those days until the war broke out and they declared blackout, and I had to put it out; otherwise, it would burn night and day.

Q. During this period of time prior to your giving a lease to Joseph Faria, did you have any representative of any other oil or gas companies approach you for a lease on your property?

A. They did approach my dad, yes.

(Testimony of Edward Faria.)

Q. Do you know who they were?

A. No, I don't.

Q. Did you have any transactions with any of them, yourself? A. No. [47]

Q. After this lease was given to Joseph Faria, did anyone approach you? A. Yes.

Q. Who approached you?

A. It was a geologist from the Shell Oil Company.

Q. They tried to obtain a lease on your property?

A. Not him directly, but indirectly they did.

Q. Did you give them any lease?

A. No; we wouldn't break the lease with Joe Faria.

Q. In this lease did you make reservation also of a one-eighth royalty? A. Yes.

Q. You, like your mother, have made a settlement with the Government as to everything on this property except your royalty interest reserved in the lease? A. That's right.

Q. What, in your opinion, was the value of your royalty interest on the date of the filing of this suit?

A. \$3500.

Q. That is the amount for which you contend?

A. Right.

Mr. Scampini: That is all.

Cross-Examination

By Mr. Bourquin:

Q. Mr. Faria, what is your business, please?

(Testimony of Edward Faria.)

A. I am a truck driver, and a rancher, both combined.

Q. Have you ever had anything to do elsewhere with any oil or gas properties? A. No.

Q. Have you ever worked on an oil or gas exploration or development before?

A. No. I just work for an oil company.

Q. You work for an oil company? A. Yes.

Q. What oil company? A. Shell Oil.

Q. When did you work for Shell?

A. I am still working for Shell. I have been employed by them nineteen years.

Q. What have you done for Shell over the nineteen years? A. Truck driver.

Q. Truck driver? A. Yes.

Q. Have you ever bought or sold any oil or gas rights or minerals, or interests or royalties before?

A. No.

Mr. Bourquin: That is all.

MAE E. ROCHE,

called as a witness on behalf of defendants; sworn.

The Clerk: Will you state your name?

A. Mae E. Roche. I reside at Concord, California.

Direct Examination

By Mr. Scampini:

Q. How do you spell your name?

A. R-o-c-h-e.

(Testimony of Mae E. Roche.)

Q. Mrs. Roche, prior to your marriage to Mr. Roche, were you known as Mae E. Dutra?

A. Right.

Q. You are also a daughter of Mary Faria?

A. Yes.

Q. Did Mary Faria execute a deed of gift to you of approximately 4.96 acres of land of the property owned by her?

A. Right.

Q. That is parcel 57 in the complaint of the plaintiff in this case. How long have you known of that property, Mrs. Roche; ever since you were born?

A. 41 years.

Q. All right. I am sorry. During the period of time that you [49] lived on this property did you observe any indications of oil or gas seepages?

A. Yes.

Q. When did you first observe them, Mrs. Roche?

A. Well, when we used to visit the neighbors. That was about 25 years ago.

Q. What was the name of the neighbor?

A. Mrs. Brazz.

Q. What did you observe on the neighbor's property?

A. Well, they had the place there and I'll never forget, I used to go down, they had a big duck pond, and her children used to tell us they had to abandon the duck pond because there was kerosene in the pond, and the ducks—it would kill them. That was what mother was talking about.

Q. You executed a lease to Joseph Faria, Jr., covering 4.96 acres of land?

A. Yes.

(Testimony of Mae E. Roche.)

Mr. Scampini: I will ask at this time that it be deemed made part of the record, the lease to which I have just referred, under date of August 11, 1941, executed by and between May E. Dutra and Joseph Faria, Jr., and Bud Hildebrand, covering a tract of land bounded north and east by the land of Antone Faria, south by the land of Blume, et al., west by the land of John Faria, being a portion of the northwest quarter of section 21, township 2 North, Range 1 West, containing 4.96 acres of land, reserving a royalty of one-eighth of the oil and gas.

Q. Mrs. Roche, after the execution of this lease, were you approached by any representative of any oil company for a lease [50] on your property?

A. Yes, I was.

Q. Who approached you?

A. Amerada Oil Company, from Rio Vista.

Q. Were they engaged in the drilling wells or gas at Rio Vista at the time?

A. Yes, they were.

Q. Did they ask you for a lease on your property?

A. Yes.

Q. What did you say?

A. No.

Q. Had you already made a lease to Joseph Faria, Jr.?

A. Yes.

Q. Prior to giving that lease to Joseph Faria, Jr., did anyone approach you for a lease on the property?

A. Yes, years ago.

Q. Who approached you years ago?

(Testimony of Mae E. Roche.)

A. I can't remember his name, but he was from Alameda.

Q. Nothing happened as the result of that approach, is that right? A. That is right.

Q. In the course of this litigation you, like your mother and brother, have made a settlement with the Government wherein you have been paid for the value of the land other than the royalty interest reserved by you in this lease? A. Yes.

Q. What, in your opinion, is the value of the royalty interest reserved by you in this lease of July 22, 1944, on the 4.96 acres?

A. \$3500 balance.

Mr. Scampini: That is all.

Cross-Examination

By Mr. Bourquin:

Q. Mrs. Roche, you said that after you had made that lease to Joseph Faria someone came to see you to lease [51] it? A. Yes.

Q. Tell us, if you can, when was that, when do you fix that date?

A. Well, I don't remember exactly, but it was about, I should say, six months after we had leased our place, but I wouldn't remember the dates back.

Q. Well, I think the date counsel indicated in your lease was sometime in 1941.

Mr. Scampini: August 11.

Mr. Bourquin: August 11.

The Witness: I imagine the same year, yes.

(Testimony of Mae E. Roche.)

Mr. Bourquin: It was sometime in the same year?

A. Same year.

Q. That you had that approach?

A. That's right.

Q. You said that you had already made a lease to Joseph Faria? A. Correct.

Q. Have you ever been interested in any property in oil or gas elsewhere? A. No.

Q. Have you ever bought or sold any oil or gas interest or royalties before. A. No.

Mr. Bourquin: That is all.

RALPH BOLLMAN,

called as a witness on behalf of the Defendants; sworn.

The Clerk: Will you state your name?

A. Ralph Bollman.

Mr. Scampini: I might state preliminarily, may it please [52] the court, that the lease that I am going to refer to is escrowed in the Contra Costa County Title Company, and the representative of the title company will be here tomorrow at two o'clock with the escrow papers. There may be something develop in the course of this examination which may throw the lease out, I don't know yet. I will let your Honor rule on it. As I said at the pre-trial conference a week ago, I was wondering whether we could proceed preliminarily based upon a copy of the lease.

(Testimony of Ralph Bollman.)

Mr. Bourquin: I will tell you, as a matter of fact I though we had already crossed the bridge. We are willing to accept your assurance that you have a lease on Mr. Bollman's property.

Mr. Scampini: Very good. That being the case, I have no questions to ask of Mr. Bollman.

The Court: You can go now.

Mr. Bourquin: May I ask Mr. Bollman a question while he is here?

The Court: Yes.

Cross-Examination

By Mr. Bourquin:

Q. Mr. Bollman, have you filed any answer in this case, or any claim for an oil or gas interest and royalty interest? A. No.

Q. You never did, did you? A. No.

Q. And I believe your property that was out there was tried, wasn't it? There was a trial of the real estate, the value [53] of the real estate?

A. In this court, yes.

Q. Before his Honor, Judge Goodman.

A. That's right.

Q. In that case, did you assert any claim of any value touching that property from any possible content of oil and gas? A. No.

Q. You never asserted at all that the property was enhanced in value by the presence of any oil or gas on it? A. No, I did not.

Mr. Bourquin: That is all.

(Testimony of Ralph Bollman.)

Redirect Examination

By Mr. Scampini:

Q. Mr. Bollman, can you state the reason why, the fact you did not assert any value to the royalty reserved by you in this lease?

Mr. Bourquin: Would the reason, your Honor, be—well, I will withdraw any objection.

The Witness: The lease was drawn up and put in escrow with the title company with certain provisions about the drilling which had to be fulfilled before the lease became effective.

Mr. Scampini: Have you finished?

A. Well, do you want me to state in my opinion why they were not fulfilled?

Q. No. Just give your reason why you did not make any claim for any value for gas or oil under the lease.

A. Well, in my attorney's opinion the lease was not in effect at the time.

Q. It was not then based on your belief that there was not any oil or minerals or gas under the property?

A. Well, Mr. Scampini. [54] I am a dairyman, not an oil man.

Q. Is it not true, Mr. Bollman, that you had given an oral extension of the lease to Mr. Joseph Faria, Jr., for valuable consideration paid to you?

A. I gave him an oral extension of the lease for the time to fulfill his agreement, yes.

(Testimony of Ralph Bollman.)

Q. Did you consider the lease to have been in effect or to have lapsed on July 22nd, 1944?

A. If my memory is right, the first lease ran from August 31, 1942, until August 31, 1943; then it was a verbal lease from August 31, 1943, until August 31, 1944.

Mr. Scampini: That is all. No further questions.

Recross-Examination

By Mr. Bourquin:

Q. What did they pay you for that extension, Mr. Bollman?

A. There was no consideration for the lease. Mr. Faria and I had been raised on adjoining ranches and our word with one another had always been good.

Q. Well, did he pay you any premiums or any cash for the lease for further extension?

A. Well, the one——

Q. Can't you answer the question "Yes" or "No"? Did he pay you——

The Court: He wants to know whether he paid you any money for the lease or for an extension.

Q. (By Mr. Bourquin): Did he pay you any money?

A. It was not in the form of money. He offered money, and I knew his financial circumstances and I said, "Well, I'll take stock in [55] the company."

Q. You took stock in the company?

A. Yes.

(Testimony of Ralph Bollman.)

Q. So you took stock in the Cal-Bay Corporation for your lease?

A. No; I think, if I remember the conversation correct, I had made several trips to Martinez and had consulted an attorney——

Q. Let me interrupt you. I don't think this is responsive.

The Court: He just wants to know whether you got some stock in this corporation either for the lease or for the extension.

Q. (By Mr. Bourquin): Did you, Mr. Bollman?

A. Well, the reason I am trying to amplify because I cannot clearly answer "Yes" or "No" to that conscientiously. I think it was—if I remember, I recall it was for all the trouble I had been to in seeing the attorney and having a lease drawn up, and for the trips that I had made.

Q. He gave you some stock for that?

A. Yes.

Q. How much stock did you receive?

A. 100 shares.

Q. 100 shares? A. That's right.

Q. You hold that 100 shares, do you, in Cal-Bay? A. Yes.

Q. Did you ever receive any other consideration—I will withdraw that. Did you ever receive any cash? You said no. A. That's right.

Q. Did you ever receive any other stock?

A. No.

(Testimony of Ralph Bollman.)

Q. Did you ever receive a note from Mr. Faria?

A. No.

Q. Or promise to pay cash? A. No. [56]

Mr. Bourquin: That is all.

Further Redirect Examination

By Mr. Scampini:

Q. The 100 shares, if I understand you correctly, Mr. Bollman, was that given to you at the time you had this oral agreement extending the lease?

Mr. Bourquin: I will object to that. This should not be redirect in view of the fact the witness has testified he got the 100 shares for going to the attorney and having the attorney draw up a lease and making a written lease. On that ground I would say this is not redirect, your Honor.

The Court: No, I think you are wrong about that. All he is asking is the time when he got the stock.

Mr. Scampini: Yes, that's it.

The Court: He wants to know whether he got the stock at or about the time he gave the oral extension of the lease.

Mr. Scampini: That's right.

The Witness: I would say it was at or about the time, yes.

Mr. Scampini: That is all.

Mr. Bourquin: That is all.

Mr. Scampini: No further questions. May we have an adjournment at this time, your Honor?

The Court: Yes.

(The jury was admonished and an adjournment was taken until tomorrow, Thursday, January 23, 1947, at ten o'clock a.m.) [57]

Thursday, January 23, 1947, 10:00 o'clock a.m.

The Clerk: United States vs. Certain Land in Contra Costa County.

The Court: The jurors are present. You may proceed.

Mr. Scampini: At this time, may it please the Court, before calling our next witness I desire to read into the record and for the benefit of the Jury, the stipulations relating to Parcels 57, 58 and 59, properties owned by Mac E. Dutra Roche, Edward Faria and Mary Faria, relative to the settlements made in connection with the payments made by the Government.

The stipulation in the case of United States of America, Plaintiff, vs. 5,430 Acres of Land, No. 23,529-G, final judgment on Parcel 58, an order directing payment of money to the defendant providing and reading as follows:

"It Is Hereby Stipulated And Agreed by and between the United States of America, hereinafter called plaintiff, and Edward, Faria hereinafter described as defendant, as follows:

I.

"The Complaint was filed in this action on July 22, 1944, and defendant acknowledges that he has been served with a copy of the Com-

plaint, Summons and Order for Immediate possession in this action. [58]

II.

“Plaintiff agrees to pay to defendant and defendant agrees to accept the sum of Four Hundred and no/100 Dollars (\$400.00) as full, adequate and just compensation for the taking of said Parcel 58, as described in this action, and for all his right, title and interest in and to any property subject to this action; excepting from said taking, mineral rights set forth in instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 18; instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 24; instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 674 of Official Records of Contra Costa County, at page 55; instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of Contra Costa County, at page 488;”

I might state here, outside the stipulation that that is the basic lease that we offered yesterday.

“instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 23; instrument dated August 11, 1941, and recorded August 7, 1942, in Volume 672 of Official Records of Contra Costa County, at page 473. [59]

III.

“Defendant warrants that at the time of and immediately prior to the filing of this action by plaintiff, defendant was the owner of said Parcel 58, and defendant is entitled to all the compensation to be paid for the taking thereof, subject to the exceptions contained in preliminary title report No. 414802 issued by Title Insurance and Guaranty Company, San Francisco, California, (Contra Costa No. 90262-58), and said defendant consents that upon the entry of an Order of this Court in the form attached hereto, directing the payment to Contra Costa County Title Company, Martinez, California, of the sum of Four Hundred and no/100 Dollars (\$400.00), without interest, for defendant's account, a Final Judgment may be entered without notice to defendant, in favor of plaintiff and against defendant, condemning said Parcel 58, in fee simple absolute, and any right, title and interest of the defendant in and to said parcel and any property subject to this action, except mineral rights described in Paragraph II hereof; and defendant further consents that the correct description of property included in said Parcel 58 may be set forth in said Final Judgment.

IV.

It Is Further Stipulated and Agreed that the agreed sum of Four Hundred and no/100

Dollars (\$400.00) may be [60] deposited by plaintiff in the Registry of the Court as just compensation for said land, and that the Court may direct the Clerk to pay said sum to Contra Costa County Title Company, as agent for defendant, and Contra Costa County Title Company may, as agent for defendant, without charge or cost to defendant, pay and satisfy all taxes, liens and other charges against said property, except mineral rights provided by instruments particularly described in Paragraph II hereof, and pay the balance to said defendant.

“UNITED STATES OF
AMERICA,

Plaintiff.

“By M. MITCHELL BOURQUIN,

“Special Assistant to the
Attorney General,

“Attorney for Plaintiff.”

And signed by Edward Faria, and attached to said stipulation is an order by the Court which, I assume, has been made and entered in this case, Mr. Bourquin? I have not looked at the record.

Mr. Bourquin: I think so.

Mr. Scampini: I will ask that be made a part of the record, your Honor.

The Court: Very well.

Mr. Scampini: We have a stipulation for final judgment on Parcel 57 and order directing pay-

ment of money to defendant [61] Mae E. Roche, and you, ladies and gentlemen of the Jury, for the benefit of the Jury, I might say that 57 and 58 are these two parcels respectively here, 4.96 in one and 5 acres in the other.

In this stipulation, Paragraph I is the same. Paragraph II reads as follows:

II.

Plaintiff agrees to pay to defendant and defendant agrees to accept the sum of Fifteen Thousand and no/100 Dollars (\$15,000.00), as full, adequate and just compensation for the taking of said Parcel 57, as described in this action, and for all her right, title and interest in and to any property subject to this action: excepting from said taking, mineral rights set forth in instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 643 of Official Records of Contra Costa County, at page 10; instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 21; instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 628 of Official Records of said Contra Costa County, at page 278; instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of said Contra Costa County, at page 488; instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of [62] Official Records of said Contra

Costa County, at page 23; and instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 672 of Official Records of said Contra Costa County, at page 473."

The rest of the stipulation is along the lines of the first one. I think it will be stipulated that order was made by this Court as to this stipulation here?

Mr. Bourquin: Yes.

Mr. Scampini: Will you stipulate with me, Mr. Bourquin, that the property of Mae E. Roche was improved with some buildings and structures built thereon, or shall I call her back?

Mr. Bourquin: I understand that is true, yes. That is the property that you just read the stipulation in connection with?

Mr. Scampini: Yes. Now, we have a stipulation for final judgment on Parcel 59, which is the property of Mary Faria, taken by the Government and is the portion which is indicated in yellow or, rather, green, on the map below here and magnified up here, on which the well of the Cal-Bay Corporation, Faria No. 1, had been drilled, and it consists of only a portion of her property. On this stipulation the first paragraph is similar to the first paragraph of the first stipulation and the second paragraph reads as follows: [63]

II.

"Plaintiff agrees to pay to defendant and defendant agrees to accept the sum of Twenty-seven Thousand and no/100 Dollars (\$27,000.00) (including salvage to defendant in the amount

of \$220.00), as full, adequate and just compensation for the taking of said Parcel 59, as described in this action, and for all her right, title and interest in and to any property subject to this action; excepting from said taking, mineral rights set forth in instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of Contra Costa County, at page 488; instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 23; and instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 672 of Official Records of said Contra Costa County, at page 473."

And the last of the stipulations is along the same lines as the first stipulation, and this stipulation has been executed by the parties and so ordered by the Court. Is that correct?

Mr. Bourquin: Yes.

Mr. Scampini: Will you also stipulate with me, Mr. Bourquin, that the property involved in Parcel 59 taken by the Government, pursuant to that stipulation, aggregates in the sum total of 218.79 acres of land, the lease to Cal-Bay [64] Corporation, and 63.91 acres of land on the lease to Joseph Faria?

Mr. Bourquin: I understand that is right. [64-a]

JOSEPH FARIA, JR.

called as a witness on behalf of the defendants; and being first duly sworn, testified as follows:

(Testimony of Joseph Faria, Jr.)

The Clerk: Will you state your name to the Court and Jury?

A. My name is Joseph Faria.

Direct Examination

By Mr. Scampini:

Q. Mr. Faria, what is your usual occupation or business?

A. I am a farmer, own a farm, and am a farm contractor, and I own some oil wells in Maricopa and the Fruitvale district near Bakersfield, and also at Pyramid Hills.

Q. Where do you reside?

A. I reside in Brentwood, Contra Costa County.

Q. Is Geraldine Faria your mother?

A. Yes.

Q. Is Maria Faria your aunt? A. Yes.

Q. Were you raised on the property owned by Geraldine Faria adjoining the property of Maria Faria? A. Yes.

Q. Which is indicated on the map to the right of you as Parcel 64 in this condemnation suit?

A. Yes.

Q. And you were born there, were you not?

A. Yes.

Q. During the period of time that you lived on the property of Geraldine Faria, your mother, did you observe any developments on that property or on adjoining property in that vicinity relative to oil or gas?

(Testimony of Joseph Faria, Jr.)

A. Yes, sir, near Oil Canyon or Oil Creek there were oil wells drilled there by some oil company, and then after that, years after that, there was a well drilled in the Tracy Field, the discovery of a gas well; and then after that the Rio Vista gas field was discovered, and the McDonald Island gas field, and the Bradford Island gas field, and several other discoveries have been made since then on Honker Bay and Suisun area.

Q. How far from the home of your mother was Oil Creek?

A. About ten miles, ten to fifteen miles.

Q. Is that the name by which it is commonly called, Oil Creek?

A. Well, it is Oil Creek, and some call it Oil Canyon.

Q. How old were you when these wells were drilled in Oil Creek?

A. I was very young. I would say about eight or nine years old.

Q. Did you notice or did you observe any developments on your aunt's property or any seepages on your aunt's property of oil and gas covering the period of time that you lived with your mother?

A. The people who lived there, known as Bras, on the property that my aunt purchased from them, they abandoned a water well for the reason it was contaminated with oil, and some years after that my uncle and cousin drilled a well there and they discovered gas on this property.

(Testimony of Joseph Faria, Jr.)

Q. Was the well that was drilled a water well?

A. They did drill for water and the water was so bad they could not use it and they abandoned that well.

Q. Were you living on your mother's property at that time? [66]

A. No, I was not. I was living in Brentwood.

Q. Did you see the well that was drilled by your cousin?

A. No, I did not, not the water well.

Q. What well did you see?

A. I saw the gas well.

Q. Did you do anything in connection with that gas well that you recall?

A. No, sir.

Q. Did you observe whether or not it was producing gas?

A. Yes.

Q. How did you make that observation?

A. They showed it to me. They had this casing down in the well, and *they it* capped on top with with a very small outlet, if I remember right, a quarter-inch outlet; they struck a match, lit it, and it burned a flame, I would say, about that length (indicating).

Q. How many inches would you say that was?

A. Eighteen to twenty inches.

Q. How long did that burn, to your knowledge?

A. It burned steadily all the time it was there.

Q. I mean. how many years or how many months?

(Testimony of Joseph Faria, Jr.)

A. The well would burn steadily day and night and had been there for twenty years or better.

Q. Was it there when you took a lease on the property from your aunt, Mary Faria?

A. Yes, sir.

Q. I will show you here what appears to be a colored photograph, and I will ask you if you know what that is?

A. Yes, that is the gas well. [67]

Q. Did you have that picture taken?

A. Yes.

Mr. Scampini: May I show it to the Jury, your Honor?

The Court: You will have to offer it first.

Mr. Scampini: I offer this in evidence as Plaintiff's Exhibit 1.

Mr. Bourquin: No objection.

(The photograph in question was thereupon received in evidence and marked Defendants' Exhibit 1.)

[Defendants' Exhibit 1 appears on page 1215.]

The Court: Would you have the witness state when that picture was taken?

Mr. Scampini: Yes.

Q. Mr. Faria, when was the picture of this well taken?

A. The picture of this well was taken—I can't

(Testimony of Joseph Faria, Jr.)

recall the date, but it was, I think, in 1945, taken by Mr. Phelps of Pittsburg.

Q. Was it taken pursuant to a stipulation entered into with the Navy?

A. Yes, that is right.

Q. Permitting the taking of the picture?

A. Yes.

The Court: That was after the Navy was in possession.

Mr. Scampini: Yes, the Navy was already in possession.

Q. Have you had any experience in the production of petroleum or natural gas?

A. No, only from the wells that I owned.

Q. Where do you own wells?

A. At Maricopa.

Q. What do you own there?

A. I own a half-interest in [68] 40 acres of four producing oil wells.

Q. Do you own any other properties of oil or gas in there?

A. Yes, I own an interest in four other wells in the Fruitvale Field near Bakersfield.

Q. When was it you first became interested in the production of oil and gas?

A. In 1944—you mean at the very beginning?

Q. The first time.

A. Ever since I was about 20 years old.

Q. What did you do in that respect?

(Testimony of Joseph Faria, Jr.)

A. Well, I observed what was going on throughout the country, and I was very much interested, and I would watch developments in other parts of the country whenever I went through.

Q. When was it that you first made any investment in the oil business?

A. In Santa Cruz in 1939.

Q. Under what circumstances?

A. A group of us got together and we decided to spend a little money and drill a well at Santa Cruz on Tom Major's ranch, seven miles north of Santa Cruz.

Q. What happened to that venture?

A. We drilled the well. It was a shallow well, and we decided it would not pay for us to try to produce the well, and we abandoned it.

Q. Do you know Mr. Bud Hildebrand?

A. I met Mr. Hildebrand sometime after we abandoned this well at the Tom Major's property. I was visiting at Mr. Major's home and I met him there. He was looking for some information in regard to this [69] well.

Q. What, if anything, took place between you and Mr. Hildebrand at that time?

A. I gave him whatever information I had—

Mr. Bourquin: I will object to this, your Honor.

Mr. Scampini: It is only preliminary to the forming of the partnership between Mr. Faria and Mr. Hildebrand.

The Court: What is the materiality of all these

(Testimony of Joseph Faria, Jr.)

matters, as to how these men got together, affecting the value of this property?

Mr. Scampini: I suppose from that point of view it would not be material; it is preliminary.

The Court: I think you could skip down and get to what you have in mind.

Mr. Scampini: Mr. Hildebrand was one of the lessees with Mr. Maria.

The Court: There isn't any dispute that the witness and Mr. Hildebrand took these leases, is there?

Mr. Bourquin: None, your Honor.

Mr. Scampini: After meeting Mr. Hildebrand, what if anything, did you do with Mr. Hildebrand, looking toward acquisition of oil and gas leases?

The Court: Mr. Scampini: I thought we agreed on that. It has been agreed that the leases were obtained by the witness and Mr. Hildebrand. The only question is, what is this property [70] worth? What, if anything, are the oil rights worth? I think you could get right down to that. There is no question of title involved here, is there?

Mr. Bourquin: None, your Honor.

The Court: The only question for the jury to decide is how much is this worth?

Q. (By Mr. Scampini) After meeting Mr. Hildebrand, did you and Mr. Hildebrand obtain a lease from your aunt, Mary Faria, on the property owned by her, consisting of 441 acres of land?

A. Yes.

Q. And the lease was for a period of 20 years?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. From and after the date hereof, and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced in quantities deemed paying by lessee at a royalty of $\frac{1}{8}$ part of said oil. Is that correct?

A. Yes.

Q. The lease from Mary Faria is dated August 11, 1941, and was taken in your name and that of Mr. Bud Hildebrand?

A. Yes.

Q. And thereafter recorded in Book 637 of Official Records, page 488, of the records of Contra Costa County, on the date of April 10, 1942, and thereafter Mr. Hildebrand assigned his interest in this lease to you, did he not?

A. Yes.

Q. And the assignment is recorded April 10, 1942, in Volume 655 of Official Records, at page 23. Mr. Hildebrand subsequently [71] died, isn't that right?

A. Yes.

Mr. Scampini: I will ask that I be allowed to offer photostatic copy of the lease and the assignment, and have it marked Defendants' Exhibit next in order.

Mr. Bourquin: If you think the lease is necessary in the record—I thought that was made plain—there is no question but what this is the lease of Mary Faria to which the Cal Bay Corporation succeeded. I thought it was stipulated that that lease was in effect at the time of the taking. Of course if the terms have some bearing on the value——

Mr. Scampini: That is the point. It might have

(Testimony of Joseph Faria, Jr.)

some bearing on our case before the jury and on appeal. I ask that it be marked as our exhibit next in order.

The Court: It may be admitted.

(The lease in question was thereupon received in evidence and marked Defendants' Exhibit 2.)

[Defendants' Exhibit 2 appears on pages 1217 to 1238.]

Q. (By Mr. Scampini) Did you obtain a lease from Mae E. Dutra? A. Yes.

Q. And that, of course, is the lease dated August 11, 1941, covering 4.96 acres, for a term of 20 years, and so long thereafter as oil and gas is produced, at a royalty of $\frac{1}{8}$? A. Yes.

Q. That lease was also taken in the name of yourself and Mr. Hildebrand, and thereafter Mr. Hildebrand assigned to you. is that correct?

A. Yes.

Mr. Scampini: I offer that lease and ask that it be marked [72] Defendants' Exhibit next in order, your Honor.

(The lease in question was thereupon received in evidence and marked Defendants' Exhibit 3.)

[Defendants' Exhibit No. 3 is an oil and gas lease, and assignment thereof, in substantially the same form and to the same effect as Defendants' Exhibit No. 2, which is set out at pages 1217 to 1238, and differing from Defend-

(Testimony of Joseph Faria, Jr.)

ants' Exhibit No. 2, only as to names of the lessors and the descriptions of the several parcels of land.]

Q. (By Mr. Scampini) You obtained a lease from Edward Faria on the date of August 11, 1941, covering five acres, more or less, adjoining the property of your aunt, and also for a term of 20 years from the date thereof, and so long as oil and gas is produced thereon—— A. Yes.

Q. At a royalty of $\frac{1}{8}$? A. Yes.

Q. That was taken in the name of yourself and Bud Hildebrand, and thereafter Bud Hildebrand assigned his interest to you? A. Yes.

Mr. Scampini: I will ask that that be marked Defendants' Exhibit next in order, your Honor.

(The lease in question was thereupon received in evidence and marked Defendants' Exhibit 4.)

[Defendants' Exhibit No. 4 is an oil and gas lease, and assignment thereof, in substantially the same form and to the same effect as Defendants' Exhibit No. 2, which is set out at pages 1217 to 1238, and differing from Defendants' Exhibit No. 2, only as to names of the lessors and the descriptions of the several parcels of land.]

Q. (By Mr. Scampini) You obtained a lease, did you not, from Manuel Alvernaz and Mary J. Alvernaz, his wife, covering the property which is

(Testimony of Joseph Faria, Jr.)

shown on the map here of 310 acres, more or less, lying above the property of your mother, Geraldine Faria, is that right? A. Yes.

Q. That was for a term of 20 years, and so long thereafter as oil and gas is produced therefrom, and the date of this lease is March 3, 1942, and that was taken in the name of yourself and Bud Hildebrand, and was assigned by Mr. Hildebrand to you thereafter? A. Yes. [73]

Mr. Scampini: May that be marked our exhibit next in order, your Honor?

(The lease in question was thereupon received in evidence and marked Defendants' Exhibit 5.)

[Defendants' Exhibit No. 5 is an oil and gas lease, and assignment thereof, in substantially the same form and to the same effect as Defendants' Exhibit No. 2, which is set out at pages 1217 to 1238, and differing from Defendants' Exhibit No. 2, only as to names of the lessors and the descriptions of the several parcels of land.]

Mr. Campini: You also obtained a lease from your mother, Geraldine Faria, covering the property owned by her and lying adjoining the property of Geraldine Faria, as shown on the map on the bulle-

Q. That contains 221 acres more or less, and the

(Testimony of Joseph Faria, Jr.)

date of that lease is December 23, 1941, for a term of 20 years, and so long thereafter as oil and gas is produced therefrom, and taken in the name of yourself and Bud Hildebrand and by Bud Hildebrand assigned over to you.

I will ask that that be marked our exhibit next in order.

(The lease in question was thereupon received in evidence and marked Defendants' Exhibit 6.)

[Defendants' Exhibit No. 6 is an oil and gas lease, and assignment thereof, in substantially the same form and to the same effect as Defendants' Exhibit No. 2, which is set out at pages 1217 to 1238, and differing from Defendants' Exhibit No. 2, only as to names of the lessors and the descriptions of the several parcels of land.]

Q. (By Mr. Scampini) In addition to those leases, Mr. Faria, did you obtain a lease on the date of August 11, 1941, from Joe Chavez and Dorothy Chavez, embracing 286 acres on one parcel and 128 acres more or less on another parcel, which is shown on the map down here as parcel 71?

A. That is right.

Q. That lease was taken on August 11, 1941, for a term of 20 years, at a royalty of $\frac{1}{8}$, and I might say at this point in all these leases the royalty was the same; is that right? [74]

A. That is right.

(Testimony of Joseph Faria, Jr.)

Q. And taken in the name of you and Bud Hildebrand, and by Bud Hildebrand assigned over to you?

A. That is right.

Mr. Scampini: I will ask that that be marked Exhibit next in order.

(The lease in question was thereupon received in evidence and marked Defendants' Exhibit 7.)

[Defendants' Exhibit No. 7 is an oil and gas lease, and assignment thereof, in substantially the same form and to the same effect as Defendants' Exhibit No. 2, which is set out at pages 1217 to 1238, and differing from Defendants' Exhibit No. 2, only as to names of the lessors and the descriptions of the several parcels of land.]

Q. (By Mr. Scampini) In addition to that, did you negotiate and obtain from Ralph D. Bollman on date of August 31, 1942, a lease embracing 771 acres, more or less, owned by Mr. Bollman and shown on the map as Parcel 3-A?

A. Yes, that is right.

Q. And that lease was deposited in escrow with the Contra Costa County Title Company, is that right? A. Yes.

Q. To be delivered to you upon the performance of certain conditions and commitments. Now, on August 31, 1942, that lease expired as to the commitment, and did you have any negotiations with Mr. Bollman looking toward its extension?

(Testimony of Joseph Faria, Jr.)

A. Yes, we had an oral agreement.

Q. What was that oral agreement?

A. He agreed to let me have the extension, and it was agreed with him that we could carry on just as I was doing, because I was drilling this well here—we were drilling the Cal Bay well at that time, and depending on what would happen on this Cal Bay well, if it came in as a producer, then I could go on his property after that.

Q. Did you pay him any consideration for that extension? [75]

A. I gave him \$100 for the expense he had.

Q. Did you pay him \$100 in cash, or other form of property?

A. He took 100 shares of Cal Bay stock.

Q. At what par value? A. A dollar.

Q. And is that lease still in escrow with the Contra Costa County Title? A. Yes.

Q. Awaiting developments on the property, is that right? A. Yes.

Mr. Scampini: I have a copy of that lease here that I have delivered to counsel. The original is on file. I ask that I be permitted to put the copy in evidence.

Mr. Bourquin: Very well.

Mr. Scampini: Thank you.

[Defendants' Exhibit No. 8 is an oil and gas tin board as Parcel 64, is that right? A. Yes.

lease, and assignment thereof, in substantially the same form and to the same effect as De-

(Testimony of Joseph Faria, Jr.)

fendants' Exhibit No. 2, which is set out at pages 1217 to 1238, and differing from Defendants' Exhibit No. 2, only as to names of the lessors and the descriptions of the several parcels of land.]

Q. Did you have any other leases on the structure there?

A. Yes, on that Louis Machado property on the extreme south end of the structure.

Q. What happened to that lease?

A. I still have it.

Q. How many acres are embraced in that lease?

A. 480.

Q. That property is not subject to any of this proceeding? A. No.

Q. Under what circumstances and for what reasons did you accumulate these leases?

Mr. Bourquin: Is this material, your Honor?

The Court: No, I don't think so. I think it can be safely assumed that the property was accumulated to see whether they could get gas or oil.

Mr. Scampini: I wanted to prove it for the purpose of the record that the leases were accumulated as the result of certain investigations made relative to the geology and that——

The Court: Are you offering this witness as a geologist?

Mr. Scampini: I can state for the purpose of

(Testimony of Joseph Faria, Jr.)

the record it was in connection with getting work done and, of course, the taking of these leases.

The Court: I don't see the materiality of all that myself. What difference did it make what investigation he made? The question is, what are the facts with respect to this property at the time it was taken by the Government? I assume you have witnesses, I believe it was stated in the pre-trial conference, who will testify as to their examination and investigation as to the nature of this property at the time of the taking. That is the only question.

Mr. Scampini: The thought I had in mind was that I desire to show for the purpose of the record that these pieces were taken by Mr. Hildebrand and Mr. Faria and not based on any sudden decision, but after considerable exploration and based upon the geology information obtained by them as to the possibilities of the territory.

The Court: I don't see the materiality of it.

Mr. Scampini: I will rest—

The Court: Anything that is material to establish the value of the property, of course, you should have full opportunity to present to the Jury, but I think that probably the Government lawyers would stipulate with you that the witness made some investigation and was convinced that he had good reason to take these leases. What his reasons may have been in relation to the value of the prop-

(Testimony of Joseph Faria, Jr.)

erty at the time it was taken by the Government—unless you are offering them as a background to give his opinion as to the value at the time of taking——

Mr. Scampini: That is exactly what I had in mind.

The Court: Then you run into this question, you have to qualify your witness as an expert and while it has been the rule under the state law that you can't ask—you are going [78] to ask him as to what sales were made?

Mr. Scampini: No.

The Court: Just as to what his knowledge is?

Mr. Scampini: I think he can testify as to his opinion as to the value of these leases.

The Court: As the owner of a leasehold interest, would you think that that would be right?

Mr. Bourquin: I would think, your Honor, they might run in the category of the owners and they are entitled to express an opinion, the point of it being for the Court and Jury to measure it by what they might be expected to know. May I interject here, it seems to me going into this is like asking Mr. Faria or someone else or hoping to prove there is some mineral over in that property out there in the Mojave Desert, because a man went out and took a lease on it. If he wants to ask Mr. Faria any questions that would bear on the value there or potential——

(Testimony of Joseph Faria, Jr.)

The Court: I think he can ask him his opinion as the owner of an interest in this property as to what he considered the mineral rights worth at the time of the taking by the Government. Then, of course, you may develop his qualifications to give an opinion. As to what investigation he made——

Mr. Scampini: Well, do I understand, your Honor, to infer by that I am not going to be permitted to offer into the record what was done on this property by way of [79] drilling? This is two years before the Navy came into the picture, after they have been working on this property.

The Court: Well, I am not pretending to shut out any material evidence as to physical conditions, of course not. However, I do not think a long examination as to what the witness' reasons were for taking the leases is necessary; that is a different subject matter from what you are now talking about.

Mr. Scampini: Let's see if we can approach it in a different manner.

Q. Mr. Faria, after you and Mr. Hildebrand got these leases, what did you do in respect to developing the property?

A. Mr Hildebrand and I met Harold Henry and Mr. Bush and we were talking about what we should do——

The Court. That is what I was afraid of. Just have him testify what physically was done.

Mr. Scampini: Let me ask this: Did you retain

(Testimony of Joseph Faria, Jr.)

the services of a geologist for the purpose of giving you a report on the property? A. Yes.

Q. Who did you retain?

A. Byron Norris.

Q. From what city?

A. From Los Angeles.

Q. Did Mr. Norris make any study of the property for you? A. Yes.

Q. Did he deliver to you a report?

A. Yes.

Q. Under what date is that report?

A. March 20, 1942. [80]

Q. No; it is April 20, isn't it?

A. April 20, I think.

Q. April 20, 1942?

A. Yes, April 20; pardon me.

Q. When you received that report, what did you do in connection with developing the properties?

A. We had—I had—we formed a corporation.

Q. What is the name of the corporation?

A. Cal Bay Corporation.

Q. Who formed the corporation?

A. W. W. Morgan was on the board and Henry J. Gwyne, John Knox, Vice-President, Joseph Faria, President, Esther L. Faria, and Mr. Webster was our attorney.

Q. Upon forming this corporation know as Cal Bay Corporation, did you assign some of these leases to the Cal Bay Corporation? A. Yes.

Q. Cal Bay Corporation was organized under

(Testimony of Joseph Faria, Jr.)

the laws of the State of California on April 17, 1942; is that correct? A. Right.

Q. To Cal Bay Corporation you assigned, did you not, the leases taken by you and Mr. Hildebrand covering the property of Mae E. Dutra, Parcel 57, consisting of 4.96 acres, and Parcel 58 owned by Edward Faria? A. Yes.

Q. You assigned all of the leases that you obtained from Mary Faria, consisting of 441 acres, more or less, other than 73½ acres that you retained for yourself, did you not?

A. Yes, that's right. [81]

Q. And did you assign to Cal Bay Corporation the lease that you obtained from Manuel V. Alvernaz, consisting of 310 acres? A. Yes.

Q. Altogether you assigned to Cal Bay Corporation, did you not, approximately 687 acres?

A. Yes.

Mr. Bourquin: Are these the same assignments that you have just testified to this morning when you put the leases in evidence?

Mr. Scampini: Yes, and they are in evidence as part of the record and they have been recorded.

Mr. Bourquin: We are going over the same ground, your Honor. I am just preparing to make objection.

Mr. Scampini: How am I going to show value unless I prove the number of acres assigned to them and the number of acres retained by others?

Mr. Bourquin: I thought that was in the record.

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: The Jury has not heard it unless I read those lengthy documents.

The Court: I thought it was understood that there was going to be just a unit valuation requested of the Jury and you were going to make your own allocations. Was I in error about that?

Mr. Scampini: Well, there are 687 acres which went to Cal Bay Corporation and 1441 acres of these leases retained by Joseph Faria, Jr., and of the 687 acres given to Cal Bay [82] Corporation only a certain portion has been taken by the Government and likewise of the case of Mr. Faria, and unless I put it in the record and make available to the Jury the divisions of these properties, I am afraid the Jury will be so confused when the experts' testimony is given on their methods of evaluation.

The Court: Proceed.

Q. (By Mr. Scampini): Altogether the leases accumulated covered approximately 2,100 acres?

A. Yes.

Q. You retained the rest of the acreage for yourself?

A. Yes.

Q. When Cal Bay Corporation had been organized and these leases had been assigned to the corporation, what did you do next?

A. We obtained a permit.

Q. From whom?

A. From the Division of Corporations.

Q. For the issuance of stock?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. How many shares were issued by Cal Bay Corporation? A. 62,500.

Q. To whom were those issued, those shares?

A. 62,500 shares issued to me and 62,500 to be sold.

Q. 62,500 shares were issued to you in consideration of the assignment by you of these leases, is that correct? A. Yes.

Q. And 62,500 shares were sold at what price?

A. One dollar a share.

Q. Did you then begin the drilling of a well on the property? [83] A. Yes.

Q. When did you begin drilling?

A. On July 14, 1943.

Q. Who was the superintendent or supervisor, or in charge?

A. Harold J. Henry was the drilling superintendent, and Byron Norris the engineer.

Q. The drilling progressed? A. Yes.

Q. Thereafter? A. Yes.

Q. Did you take cores at regular intervals?

A. A great many cores.

Q. Who would examine the cores of the drilling?

A. A paleontologist and Mr. Norris.

Q. Who was the paleontologist?

A. Glenn Ferguson.

Q. Where?

A. Union Oil Company of Bakersfield.

Q. Who made the location for you upon which you drilled the well? A. Byron Norris.

(Testimony of Joseph Faria, Jr.)

Q. Did he give you report in that respect?

A. Yes.

Q. You had nothing to do with selecting the location yourself, did you? A. No.

Q. Where did Byron Norris locate the drilling of this well, on what property?

A. The Mary Faria property.

Q. On Parcel 59? A. Yes, 59—58.

Q. That is 58 there? A. That's right.

Q. Approximately how many feet away from where this gas seepage well was did Mr. Norris locate the drilling of the well?

A. Approximately 600 feet. [84]

Q. What name was given to the well that was being drilled? A. Faria No. 1.

Q. Faria No. 1. What type of derrick was used in connection with drilling the well?

A. 126-foot steel derrick.

Q. I show you here a photograph of a derrick and well; will you please tell whether or not you recognize it? A. Yes, that is it.

Q. By whom was that picture taken?

A. This picture was taken by McBride.

Q. Was McBride one of the workers there?

A. No; he was a man from Antioch who took it.

Q. Was it taken upon your request?

A. Yes.

Q. Do you recognize that? A. Yes.

Q. Did you see the well in course of drilling?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: I ask this be marked as Defendants' Exhibit next in order.

The Court: It may be marked.

(The photograph in question was thereupon marked Defendants' Exhibit No. 9.)

Mr. Scampini: At this time, may it please the Court, I would like to have for the purpose of identification marked the maps on the bulletin boards here, which will then be present and identified by the experts who will tie them up together.

Mr. Bourquin: No objection. for identification. Your [85] Honor, we will observe the question of materiality until these maps are offered.

The Court: Which ones do you wish marked for identification?

Mr. Scampini: I would suggest the map which lies underneath the large map here, there are two large maps, the map entitled, "Official Map of Contra Costa County, California." I ask that be marked for identification Exhibit No. 10.)

The Court: No. 10 for Identification.

(The map in question was thereupon marked Defendants' Exhibit 10 for Identification.)

Mr. Bourquin: May I ask, do you desire to put that map in evidence?

Mr. Scampini: Yes.

Mr. Bourquin: We will have no objection to that map just mentioned.

The Court: All right, that is No. 10 and will be in evidence.

(Testimony of Joseph Faria, Jr.)

(Defendants' Exhibit 10 for Identification was thereupon received in evidence.)

Mr. Scampini: I ask this "Bransford's Map of California Oil Fields" be offered in evidence as our exhibit next in order.

Mr. Bourquin: We will object to that map remote, irrelevant, immaterial, a map taking in the whole of California, as [86] to its relevancy or materiality to prove the value in this locality.

Mr. Hettman: He is only offering it for identification.

Mr. Bourquin: He offered it in evidence.

Mr. Scampini: I offered it in evidence.

The Court: Mark it for identification.

(The map in question was thereupon marked Defendants' Exhibit 11 for Identification.)

Mr. Scampini: I will ask that the next exhibit for identification be the map showing "Potential Oil and Gas Lands as Taken by U. S. Navy re Expansion of Naval Ammunition, Port Chicago, made to accompany Report dated January 15, 1945, John H. Wents, Jr."

The Court: That will be No. 12 for Identification.

(The map in question was thereupon marked Defendants' Exhibit 12 for Identification.)

Mr. Scampini: I ask the next map which I offer for the purpose of identification and which is map

(Testimony of Joseph Faria, Jr.)
entitled, "U. S. Department of Interior, Geological
Survey, California Antioch Quadrangle."

Mr. Bourquin: For identification?

Mr. Scampini: For identification.

The Court: That will be 13 for Identification.

(Thereupon the map in question was marked
Defendants' Exhibit 13 for Identification.)

Mr. Scampini: I will ask if Government counsel
will stipulate with me that the well to which Mr.
Faria has referred as Faria No. 1 was located on
the map referred to here is the map entitled or
marked No. 12 for Identification.

Mr. Bourquin: That is the little map made by
Mr. Wents?

Mr. Scampini: Made by Mr. Wents.

Mr. Bourquin: The location of this well is as
purportedly shown on that map?

Mr. Scampini: That's right.

Mr. Bourquin: No question about that.

Mr. Scampini: Does your Honor wish to take
the recess at this time?

The Court: Yes. Please bear in mind the ad-
monition the Court has heretofore given you, ladies
and gentlemen.

(Recess.) [88]

The Court: The jurors are all present. You may
proceed.

Q. (By Mr. Scampini): Mr. Faria, I show you

(Testimony of Joseph Faria, Jr.)

here a photograph and I ask you to look at it and tell me, if you can identify it and state what it is.

A. Yes, that is a picture of the drilling equipment on this property, the Mary Faria location.

Q. When was that picture taken, if you know?

A. That was taken in October, 1944.

Q. 1944, or 1943? A. 1944.

Q. By whom?

A. Taken by Richard Stevenson.

Q. Under your supervision? A. Yes.

Q. At your direction? A. Yes.

Mr. Scampini: I offer this in evidence as our exhibit next in order, your Honor.

(The photograph in question was thereupon received in evidence and marked Defendants' Exhibit 14.)

[Defendants' Exhibit 14 appears on page 1240.]

Q. (By Mr. Scampini): I show you here a photograph and ask you if you can identify or state what it is. A. That is the mud pit.

Q. Mud pit of what?

A. The mud that is used for circulating in the well.

Q. Of the Faria well? A. Yes.

Q. When was that photograph taken?

A. This was taken in October.

Q. What year? A. 1944.

Q. By whom? A. By McBride. [89]

Q. Under your direction and at your request?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: I will offer that into evidence as our exhibit next in order.

(The photograph in question was thereupon received in evidence and marked Defendants' Exhibit 15.)

[Defendants' Exhibit 14 appears on page 1241.]

Q. (By Mr. Scampini): I show you here a photograph and ask you to look at it and state what that is.

A. This is sacks filled with baroid and mud pumps on this location. This picture was taken October, 1944, by Mr. McBride.

(The photograph in question was thereupon received in evidence and marked Defendants' Exhibit 16.)

[Defendants' Exhibit 14 appears on page 1242.]

Q. (By Mr. Scampini): In the course of drilling, Mr. Faria, what, if anything, did you observe coming from the well?

A. After we drilled down a certain depth we began to notice some gas showings.

Q. At what depth did you first notice gas showings? A. Over 3000 feet.

Q. Where would you notice the gas showings?

A. We would notice it on the ditch, that is, from the mud that was coming up from the well and the return circulation. It would break through before

(Testimony of Joseph Faria, Jr.)

it entered this mud pit. You would notice it in the mud pit also.

Q. Who was your drilling superintendent at that time? A. Harold Henry.

Q. Was a log made of the work done or kept of the work done [90] on the well? A. Yes, sir.

Q. Was that kept every day? A. Yes.

Q. Who kept the log of the well for you?

A. The drillers, the drilling superintendent.

Q. Was the log of the well kept under your supervision? A. Yes.

Q. Have you got with you the log of the well?

A. Yes, I have.

Q. Is that the volume in your possession?

A. Yes.

Q. The log of the well? A. Yes.

Q. What does it represent?

A. It represents from the day we started rigging up until we abandoned the well.

Q. Will you please look at your log and state at what depth you first discovered or observed showings of any gas coming.

A. A good oil and gas showing on ditch dated 8/23/43, at the depth from 3393-3405.

Q. What, if anything, was done after that showing?

A. There was a Schlumberger taken.

Q. Who made the Schlumberger test?

A. The Schlumberger people.

Q. What is a Schlumberger, if you know?

A. I wouldn't know how to explain it

Q. If you do not know, say so.

(Testimony of Joseph Faria, Jr.)

A. It is an electric log of the well.

Q. After this Schlumberger was made, what, if anything else, was done in connection with the well.

A. Well, there were [91] cores taken.

Q. Was Mr. Norris in attendance at that time?

A. Yes.

Q. Was the Schlumberger test made under the supervision of Mr. Norris? A. Yes.

Q. Did you speak of a temperature survey?

A. A temperature survey was made quite some time afterwards, after this electric log was taken.

Q. Who made the temperature survey of the well? A. The Schlumberger people.

Q. Was that made under the supervision of Mr. Norris? A. Yes.

Q. Then what else was done, or what next was done?

A. After this was done we went on head drilling, drilling a head.

A. We went drilling ahead in very hard shale until we reached the depth of 4268 feet.

Q. Then what happened?

A. Then we had a large showing of gas.

Q. Does your log indicate the date and the approximate depth of that second showing of gas?

A. Yes.

Q. Will you please look at your log?

A. This was on the date of October—on 9/25.

Q. Of what month?

A. On the 9th and 25th.

Q. Of what month?

A. That would be——

(Testimony of Joseph Faria, Jr.)

Q. October 25, do you mean?

A. That would be September 25.

Q. September 25, 1943? A. Yes.

Q. At what depth? A. This was at 4277.

Q. What does your log indicate or reflect as having occurred on that date?

Mr. Bourquin: The log is the best evidence of that. We have not yet raised the objection to the man stating what is in the log. It has not been shown, however, that he made these observations himself, but preliminarily I would say that asking this witness, who indicates that he is not a skilled witness in this field, what the log reflects is calling for an opinion from a man whose qualifications have not been established. Let him read the entry.

The Court: Have you got the man who made the log?

Mr. Scampini: It was kept under his supervision, your Honor. The head drillers would sign the log.

The Court: I thought he said he had a man in charge of drilling by the name of——

The Witness: Harold Henry.

The Court: Did he make the log? Where is Henry? Is he available?

Mr. Scampini: I do not think so, your Honor. We have Mr. May, who subsequently followed Mr. Henry, and some of the entries have been made by him, but Mr. Henry we have not been able to locate.

The Court: He said the log was made under the direction of this witness.

(Testimony of Joseph Faria, Jr.)

Mr. Bourquin: Might I ask the defendant a question on [93] that, your Honor?

The Court: Yes.

Q. (By Mr. Bourquin): Mr. Faria, how much time did you spend at the well, say, in the period of 1943, when the well was sunk?

A. Well, I would be there—I tried to get there most of the time. I wouldn't be there every day, but I would be around there part of the time through the day.

Q. Some days you would not be there at all?

A. Some days I wouldn't be there, that is right.

Q. The log is designed to be something that is kept as a matter of daily entries?

A. Yes, each shift.

Q. Do you understand the readings of that log, what they imply?

A. Well, yes, I understand the readings of the log.

Mr. Bourquin: That poses a problem, your Honor, although I might say this: We want the material that is in that log, but we do not want it interpreted by a witness who does not understand it. As a matter of fact, we do not want it interpreted by anybody.

The Court: I think the objection is good, counsel. I think it is the duty of the court not to allow a layman to present matters of this kind. I do not wish to be repetitious in the matter, but several times I have been advised by counsel that you are

(Testimony of Joseph Faria, Jr.)

going to have experts here who are familiar with the drilling of wells, whose business it is to do it, who no doubt can take these documents and give you all the information [94] that you need, and it is an unnecessary duplication to have a man who is not qualified as an expert to testify concerning these matters.

Mr. Bourquin: We have no objection to his reading, if he wants to read the entry, but we object to this witness' interpretation.

Mr. Scampini: I made no effort to interpret the log, your Honor. I might have used the wrong word. I said, "What does it reflect?" Maybe I should have said, "What does it say?" I offer the log for identification.

The Court: Why don't you have the log marked, and then have one of your other witnesses who is qualified to explain the log?

Mr. Scampini: I ask that it be marked as our next exhibit in order for identification.

Mr. Bourquin: We join in that offer of the log for identification.

(The log of the well was thereupon marked Defendants' Exhibit 17 for Identification.)

Q. (By Mr. Scampini): Do you recall the occasion when this second showing of gas became evident in the well? A. Yes.

Q. Did you see it, yourself? A. Yes.

Q. Were you at the well at the time?

(Testimony of Joseph Faria, Jr.)

A. I was there after the search, after they made this discovery.

Q. What did you see?

A. I saw the surging of the well. The [95] gas would kick the mud from the rotary table.

Q. What else did you observe?

A. I observed the gas coming through the mud in that ditch.

Q. How did you know it was gas?

A. Because we could light it.

Q. Because you could light it? A. Yes.

Q. When that became feasible or evident to you what was done in respect to further operations?

A. They took a Schlumberger.

Q. Is that a second Schlumberger?

A. Yes. But just before they took the Schlumberger they had to build this mud up, they had to call in a baroid man.

Q. Just a moment. You say they had to call in a baroid man. Did you hire a baroid man?

A. Yes.

Q. What is a baroid man?

A. A baroid man is a mud expert that builds up the weight of the mud.

Q. Where did you bring him from?

A. He came in from Bakersfield.

Q. What was his name? A. Ed Mohor.

Q. How is that spelled? A. M-o-h-o-r.

Q. Do you know what Mr. Mohor did with respect to building up the weight of the mud, of your own personal knowledge?

(Testimony of Joseph Faria, Jr.)

A. No, I do not. I do not know what he did.

Q. What, if anything, was done after Mr. Mohor arrived, that you know of?

A. The mud was built up from 80 pounds to 96 pounds to the cubic foot and then a Schlumberger was taken.

Q. Were you there when a Schlumberger test was made? A. Yes. [96]

Q. After the Schlumberger was taken what occurred?

A. Then we took a formation test.

Q. Who made the formation test?

A. M. O. Johnson Company.

Q. How many formation tests were made, if you recall?

A. There were several, three formation tests.

Q. Do you know at what depths the formation tests were made?

A. The first one was made at the depth of 4268. The side wall packer failed to hold.

Q. What do you mean by the side wall packer failed to hold, if you know?

A. The packer didn't squeeze over against the walls of the well to release the weight from the gas zone.

Q. To put it briefly, was the first Johnson formation test successful or unsuccessful?

A. Unsuccessful.

Q. What was done with respect to making a second test?

(Testimony of Joseph Faria, Jr.)

A. We drilled ahead with a six and a quarter bit with a smaller hold to make a shoulder for the next test.

Q. Was that done? A. Yes.

Q. When was the second Johnson formation test made?

A. It was made shortly after that, just a few days, if I remember right.

Q. In what month or what year?

A. It was in October.

Q. Of what year? A. 1943.

Q. Was that second Johnson formation test successful or unsuccessful?

A. We got a light steady blow from that.

Q. Were you present when the test was made?

A. Yes. [97]

Q. Did you observe any of the gas coming from the well? A. Yes.

Q. Could you smell it?

A. I could see it. I was present there with Mr. Norris and saw it come out. First there was a slush of mud come through and then the gas came afterwards.

Q. Where did it come from?

A. It came from the hole, from this hole we had drilled.

Q. Did it come out through the drill pipe?

A. It came out through the drill pipe, yes.

Q. After the second test was made what did you do with respect to further operations?

(Testimony of Joseph Faria, Jr.)

A. We drilled ahead deeper, and then we took a temperature survey.

Q. How deep were you now?

A. We were down about 4378 feet.

Q. When you had reached that depth what, if anything, occurred?

A. We still had this gas in the showings, and when we took this temperature survey it showed there was gas coming from 4268 to 4300 feet.

Q. Do you know anything about reading a temperature survey, yourself? A. No, sir.

Q. So when you say the temperature survey showed it, that is something you learned by being told, is that right? A. That is right.

Mr. Bourquin: May that go out, your Honor?

Mr. Scampini: That may go out, counsel.

The Court: The jury will disregard that testimony. [98]

Q. (By Mr. Scampini): Was there a third Johnson test made? A. Yes.

Q. On what date was that test made?

A. I don't recall the date exactly, but it was made the same month, in October.

Q. Of 1943? A. Yes.

Q. Do you know the depth?

A. Around 4268 feet.

Q. Was that test successful or unsuccessful?

A. That was successful.

Q. Were you present? A. Yes.

Q. What did it show, or what did it result in?

(Testimony of Joseph Faria, Jr.)

A. We have the chart, the report on that, that shows——

Q. Not from the report, from your personal knowledge what did you see?

A. It showed gas.

Q. How much volume of gas, if you know?

A. The volume was 100,000 cubic feet per day, estimated by the Johnson people.

Q. In your presence? A. Yes.

Q. Have you set any casing in this well?

A. Yes.

Q. How much casing had been set by you?

A. 4343 feet.

Q. How big casing? A. 7-inch casing.

Q. Had the casing been perforated at any time?

A. Yes.

Q. What do you mean by perforation?

A. By lowering a gun into the well and shooting holes in the casing.

Q. Were perforations made for the purpose of making these tests that you have related?

A. Yes.

Q. Who shot the casing?

A. Schlumberger. [99]

Q. Were you present when it was shot?

A. Yes.

Q. Do you recall when that was done?

A. Yes, it was done in October, but the exact date I don't know.

Q. October of what year? A. 1943.

Q. After the third Johnson formation test had

(Testimony of Joseph Faria, Jr.)

been made what happened, or what did you do in respect to further development?

A. This third formation test was made during the time after we had placed this casing in the well. The Dow Chemical Company had their expert chemist up there, and he took a sample of this gas.

Q. Just a moment. Did you call the Dow Chemical Company to come in and make an analysis of the gas? A. Yes.

Q. Do you recall the name of the person who was sent to make the test?

A. Yes, Mr. Obreg.

Q. Of the Dow Chemical Company?

A. Yes.

Q. Was a sample of gas taken and an analysis made by Mr. Obreg? A. Yes.

Q. Did you receive a report from Mr. Obreg on that? A. Yes.

Q. Was that report submitted to Mr. Norris?

A. Yes.

Q. After that was done, what, if anything, further was done with respect to development?

A. We had a report then after that—we went down and shot some more holes just below that zone, 4268, and made another test, and when we made this test we had 125,000 cubic feet of gas, estimated 125,000 cubic feet of gas per day. [100]

Q. Who made that test?

A. M. O. Johnson.

Q. In your presence? A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. This was the latter part of October, 1943?

A. Yes.

Q. After the third test had been completed what, if anything, further was done in respect to operations?

A. We had a report then written up by Byron Norris.

Q. A report referring to what?

A. To him—that it was very encouraging——

Q. No, don't tell us what the report said. That may go out. Just tell us what was the purpose of the report.

A. To raise more capital.

Mr. Bourquin: Just a minute, please. That may be a question that would come in for discussion here. We will object to this witness giving an opinion as to the purpose of the report.

Mr. Scampini: I will withdraw the question, Counsel. Let me put it this way:

Q. Did you at this time continue operations looking towards further drilling?

A. We had this report written——

Mr. Scampini: Just a moment.

Mr. Bourquin: Just a moment. I move that that be stricken as not responsive.

The Court: That may go out.

Q. (By Mr. Scampini): Did you ask Mr. Byron Norris to submit to the Cal Bay Corporation a report concerning the drilling [101] operations which had been conducted up to that time?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. And didn't Mr. Byron Norris submit that report to you? A. Yes.

Q. Do you know the date of that report?

A. It was November 1, 1943.

Q. When you received that report what, if anything further, did you do in respect to further operations?

A. We had a permit to raise additional capital.

Q. From whom did you obtain the permit?

A. From the Division of Corporations.

Q. How many more shares were raised pursuant to that permit? A. 45,000 shares.

Q. Did you continue operations or did you suspend operations?

A. We suspended operations there for the reason it was in the wintertime, and we raised the money through the winter and then went on and started drilling in July, 1944.

Q. During this first period of drilling up to the time when operations were suspended in the latter part of October, how many shifts or tours had been used by you in drilling?

A. Pardon me, I didn't—

Q. How many shifts.

A. Refer to the date.

Q. October, 1943.

A. Three shifts a day.

Q. Three shifts a day? A. Yes.

Q. The first five months of operation you used three shifts a day? A. Yes. [102]

Q. Approximately how much does it cost—

(Testimony of Joseph Faria, Jr.)

Mr. Bourquin: Just a minute. May I ask a question? I want to object to that as leading, because when we get to the facts here we may not agree. I object to the question as leading and ask that the answer go out. The first five months is confusing to me. I understood from the witness' own account they had been operating only from July 17th to October 27th. That is three months and ten days.

Mr. Scampini: I will stand corrected, your Honor, and I will try to refrain from asking leading questions.

Q. Mr. Faria, again going back to the subject, if I recall your testimony you started drilling on July 14, 1943, is that right? A. Yes.

Q. When did you suspend drilling operations?

A. In November, November, 1943.

Q. During the period of time between July 14th and November of 1943, how many shifts a day did you use? A. Three shifts.

Q. And how much a day does it cost to engage three shifts for the purpose of drilling a well?

Mr. Bourquin: I object to that as irrelevant and immaterial, your Honor. That is not the proper approach. It is too speculative and conjectural evidence on which to predicate value.

Mr. Scampini: The cost of drilling this well——

Mr. Bourquin: The cost of experimentation.

Mr. Scampini: The cost of drilling a well is always a material factor in determining the value of a lease, provided it is a reasonable cost.

(Testimony of Joseph Faria, Jr.)

The Court: I would like to have that question read.

(The last question was read by the reporter.)

Mr. Scampini: Per day.

The Court: Isn't that an academic question?

Mr. Scampini: I do not think so, your Honor, if I may respectfully say so.

The Court: What does it cost for three shifts a day? Do you mean what is the reasonable cost? Are you asking the witness what it cost him for three shifts, or what is the general cost of a shift of men in drilling a well?

Mr. Bourquin: Your Honor, if I may say this, what materiality would it have until the foundation has been established that the drilling served some purpose that would result in the value to be fixed? That is what I am thinking of. Certainly if a man drills a dry well, what it costs to drill the well would not be of any moment in valuing the property.

The Court: Then your objection goes more to the order of the proof. It may be that you might reserve this question until you have established more of a *prima facie* case as to its value for oil and gas. You might make a note of it so you won't be deterred from bringing it up again.

Mr. Scampini: We will come back to that. [104]

Q. When were drilling operations again resumed?

A. Began rigging up in June, 1944.

(Testimony of Joseph Faria, Jr.)

Q. What did you do in respect to conducting operations in June, 1944?

A. Well, we swabbed the well.

Q. How many shifts did you use in June, 1944?

A. One shift.

Q. Up to June, 1944, or the time when you resumed operations, had you received any information from any source of any contemplated action to condemn any part of this property by the United States?

A. No.

Q. When did you start drilling deeper?

A. In July.

Q. Approximately what date?

A. I don't recall exactly the date; it is in the log.

Q. Was it before or after the filing of the instant action by the United States?

A. Before.

Q. When was it that you first received notice of the filing of the action by the United States?

A. I remember that was July 25, 1944.

Q. Where were you when notice was received by you?

A. I was there at the properties.

Q. What form of notice did you receive?

A. Condemnation.

Q. Was it served on you?

A. Yes.

Q. After you received that notice what did you do in respect to further operations?

A. I met with the Board of Directors and we hired the firm of Fitzgerald, Abbott & Beardsley, of Oakland. [105]

(Testimony of Joseph Faria, Jr.)

Q. Did you continue to drill after you had been served with notice? A. No.

Q. What, if anything, was done after notice was served upon you in respect to negotiations being conducted with the Navy?

A. Mr. Beardsley got in touch with the Navy.

Q. Tell what you did.

A. I went there with Mr. Byron Norris, the engineer, and we met with Captain Bedell, at Mare Island.

Q. Who else was present at that conference?

A. Mr. Bush.

Q. Anyone else of the Navy, that you recall?

A. No, I don't. There was Mr. Bedell and his staff.

Q. What, if anything, transpired at this conference?

Mr. Bourquin: We are faced with the notice here in the proceedings, with the complaint and the answer that they did not have enough time to find the minerals here. Well, I cannot see, nevertheless, how what transpired after the filing, what passed between this man and Navy personnel, what bearing that has on the question of value. I want to object to it as immaterial and irrelevant.

The Court: This was after the complaint in condemnation was filed?

Mr. Bourquin: It was after the complaint in condemnation was filed. It has been stated by both counsel here before the jury and to your Honor that there were negotiations and a request to be

(Testimony of Joseph Maria, Jr.)

allowed to continue there, and they were given [106] leave, and that they ran along until finally the leave was cut off in January, January 13, 1945.

The Court: Do you need to bring out anything more than the matters that have been referred to?

Mr. Scampini: Yes, your Honor; I desire to prove by this witness that as the result of conferences conducted between the witness and his engineer and geologist, and representatives of the U. S. Navy, a stipulation was entered into, approved by this court, whereby they were given an extension of time and possession of parcels 58 and 59 was held in suspension until thirty days after written notice was to be served, and during that period of time they were to be allowed to drill.

Mr. Bourquin: Let's take the stipulation and put it in evidence. We agree to that.

The Court: There is no dispute about that matter; just make a statement.

Mr. Bourquin: Correct.

The Court: Is the statement you just made, is that acceptable to you?

Mr. Bourquin: Yes, your Honor. The stipulation is on file and your Honor made an order.

Mr. Scampini: That is all I was coming to, that a stipulation was entered into.

The Court: Do you wish to read the stipulation?

Mr. Scampini: Yes, I intend to, your Honor.

The Court: Suppose you read the stipulation and that will take care of it. Is it long?

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: Yes, your Honor. I will now read into the record——

The Court: I say, is it a long stipulation?

Mr. Scampini: No. It is about a page and a half.

The Court: All right.

Mr. Scampini: Half a page, rather.

The Court: Read it to the jury.

Mr. Scampini: Stipulation dated, I believe, September 18, 1944. My file does not indicate the date, I believe that is the date.

Mr. Bourquin: I don't know.

Mr. Scampini: I have not been able to find it in the file.

Mr. Bourquin: I remember very well there in August and September.

The Court: It was some time subsequent to the filing of the suit?

Mr. Bourquin: Yes.

Mr. Scampini: Yes, your Honor, it was.

Mr. Bourquin: It culminated from some oral negotiations of the parties and it was the means of perfecting it, so the purpose was so the navy maintained that right to move ammunition when they had to.

Mr. Scampini: Accordingly, I now read into the record [108] the stipulation——

Mr. Bourquin: May I see the one that you have, because I know there was more than one written.

(Testimony of Joseph Faria, Jr.)

Here is one September 28, 1944, approved and ordered—it is right. The copy you have is the copy of the stipulation, Mr. Scampini. While it is not dated, I see you have a written pencil mark here. September 28th is the date the judge made the order.

Mr. Scampini: That's right. The stipulation reads as follows:

“Whereas, Cal Bay Corporation, a California corporation, defendant sued herein as First Doe Corporation, is in possession of Parcels 58 and 59 referred to in the complaint as lessee thereof, and is desirous of continuing in possession thereof for the purpose of further prosecuting its drilling and other operations thereon, it is stipulated as follows:

“1. Notwithstanding the order for the possession made herein on July 24, 1944, said defendant may continue in possession of said parcels and continue its operations thereon until one month after service by the plaintiff on said defendant, or on its attorneys herein, of written notice of the termination of said right to possession.

“2. The date upon which said defendant vacates said parcels shall be the date as of which compensation for the taking of said parcels and of any and all interest [109] therein shall be deemed to have accrued.

(Testimony of Joseph Faria, Jr.)

“3. No interest on any award made for said parcels or for either of them, or for an estate or interest therein shall accrue prior to the date on which said defendant vacates such said parcels.

M. MITCHELL BOURQUIN,
Special Assistant to the Attorney General,
Attorney for the Plaintiff.

FITZGERALD, ABBOTT &
BEARDSLEY,

as Attorneys for the Defendant Cal Bay Corporation.”

This appears: “The above stipulation is approved and it is so ordered September 28, 1944,” and I am under the impression that your Honor made that order.

The Court: I understand that one of the jurors wanted to get away a few minutes before twelve today, so we will take the adjournment a little earlier today. We will reconvene at two o'clock. The jurors will return at that time, and bear in mind in the meantime the admonition of the court.

(A recess was taken until two o'clock p.m.)

Afternoon Session, January 23, 1947

2:00 o'Clock P.M.

The Court: The Jurors are all present. You may proceed.

JOSEPH FARIA, JR.

recalled on behalf of defendants; previously sworn.

Direct Examination

(Resumed)

By Mr. Scampini:

Q. Mr. Faria, after the stipulation which we read into the record this morning, was entered into between the plaintiff and the Cal Bay Corporation, what next did you do?

A. I met with the board of directors and we hired, we decided to hire the firm of Fitzgerald, Abbott and Beardsley, in Oakland.

Q. You have gone all over that. Perhaps you did not understand me. After the stipulation which we read into the record this morning was executed, what next did you do in connection with the operations on the well?

A. What was the date on this now? Can I refer to the log?

Q. Some time in the month of September the stipulation was entered into. When did you resume drilling operations?

A. We resumed drilling operations some time in August.

Q. Some time in August? A. Yes.

Q. Was it after you had received that letter from Captain Ernest Williams? A. Yes.

Q. What did you do in connection with the drilling operations [111] when you resumed operations?

(Testimony of Joseph Faria, Jr.)

A. Well, we went, we began drilling a head with a six and a quarter bit.

Q. What size hole were you cutting at this depth?

A. Six and a quarter and prior to that it was nine and five-eighths.

Q. What kind of drilling outfit were you using?

A. Rotary, seven and a half.

Q. In the course of that drilling, what did you encounter?

A. We encountered hard shale and sand at times and shale and sand and gas.

Q. When did you next see or observe any gas showings, if you recall?

A. We noticed gas on the ditch after it was to the depth of around forty-seven hundred feet.

Q. When you observed these gas showings, what did you do about it?

A. We kept our mud weighed up and took cores, we took a core.

Q. Was Mr. Norris present during the course of this drilling?

A. I don't remember whether he was or not at that time.

Q. Did he make visits to the well from time to time? A. He did make visits, yes.

Q. After examining the cores, then what?

A. The cores he would examine and they sometimes would be sent to the micropaleontologist, Mr. Goodkoff from Los Angeles.

(Testimony of Joseph Faria, Jr.)

Q. Go ahead and tell us what happened after you resumed the drilling operations?

A. We drilled and the deeper we would [112] go the greater gas showing. It would begin to show some gas on the ditch all the time, so much so we could strike a match to it and have a flame anywhere in that ditch, take a five-gallon bucket and fill it about three-quarters full of this mud and carry it away and put a match to it and set off a blaze about twelve or fourteen inches long.

Q. What depth were you when this happened?

A. It occurred all the way from the depth of around forty-seven or forty-eight hundred feet on down.

Q. Did anything of an unusual character happen in the course of drilling?

A. Yes. We had heaving of shale, the shale was shuffing in and gave us considerable trouble. At times the bit would stick on that, bridges would form.

Q. Would you explain for the benefit of the record and the jury what you mean by heaving shale and bridges?

A. As the shale shuffed in up against the drill pipe and the bit, when you would get that at the end, it forms a bridge and it sticks your pipe, the pipe stuck and we had to use oil to loosen it.

Q. Do you recall the first incident when you had to use oil for the purpose of loosening the pipe?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. Approximately when was it, and at what depth?

A. I would have to have the log. This happened on November 8, 1944.

Q. What did you do about loosening the pipe at that time? [113]

A. We had to use oil which we had to pump on down through the center of the drill pipe, the bottom, the bit. It would return and then up in and around the drill collar and pipe, and then we left it stand there for about eight hours.

Q. Is that a usual or a normal process of loosening pipe in drilling wells? A. Yes.

Q. What happened to this oil that you poured into the well for the purpose of loosening the pipe?

Mr. Bourquin: I submit what happened is immaterial and irrelevant. I object to the form of the question.

Q. (By Mr. Scampini): What happened to the oil that was poured into the well?

A. It circulated out.

Q. What do you mean by that?

A. On the return circulation, when we started the mud pumps it pumped it on out into the ditch and down the hill.

Q. Did you have any incident, do you recall any incident when the drill pipe split? A. Yes.

Q. When was it, approximately?

A. That happened when we were running the first shift, the first eight-hour shift in August, I believe.

(Testimony of Joseph Faria, Jr.)

Q. Let me clarify that for the record. When you resumed operations, how many shifts did you employ?

A. We were just employing one shift, one eight-hour shift.

Q. Did you continue operating with the one eight-hour shift? A. No. [114]

Q. What did you do?

A. Well, we decided to hire a three-shift crew to speed up the operations.

Q. When the pipe split over there, you still had a one-shift crew? A. That's right.

Q. Describe what happened.

A. Then, when the drill pipe pulled in two, we got in what was called a fishing job, fishing out the balance of pipe from this hole. We got back out of there and the bit, a ball was formed in the bit, and it was against the shoe of the casing, the very bottom. This casing was down about forty-three hundred and forty-three feet, down on the bottom of the casing. We didn't recover this, as I said, the drill collar and the bit. That is when we decided to have a three-shift crew.

Q. What did you do when the bit would be stuck in the well? A. We whipstocked.

Q. What is that?

A. A whipstock is a large chunk of steel. I don't recall the length of it, but I imagine about eighteen feet long and it is tapered and you then have to cut a window in the casing for a section about twenty feet of casing through the steel casing, mill

(Testimony of Joseph Faria, Jr.)

it out. You set the whipstock and you go down at an angle about three degrees.

Q. Approximately what depth was the whipstock set?

A. A little over four thousand feet.

Q. How long did it take to complete that whipstock?

A. It takes quite a while, the milling of that casing. [115]

The Court: How long did it take, that is the question.

The Witness: I don't know. I would say a week.

Q. (By Mr. Scampini): Then after you resumed operations on normal drilling operations, did you have any other incident?

A. Yes, we had considerable trouble in heaving shale as we went down.

Q. In the new hole? A. Yes.

Q. Was the hole you drilled through that whipstock, was that alongside the old hole?

A. That is off to the side.

Q. You had to come back again down alongside the old hole? A. Yes.

Q. Did you encounter the same difficulty as you had previously? A. Yes.

Q. Was there anything of an unusual character?

A. There was a lot of gas showing and heaving shale and ditching and sticking pipe.

Q. Did you have to pour oil into the well more than once?

(Testimony of Joseph Faria, Jr.)

A. I don't recall. I remember one time. Yes, we poured oil in twice.

Q. When was the second incident?

A. The second incident was when we was down about two stands and a single.

Q. When was that?

A. That was in November, 1944.

Q. What do you mean by two stands and a single?

A. I would say the length of the two stands of drill pipe and a single would be about two hundred feet, I imagine. [116]

Q. I was going to clarify *in own* mind, because I am only a lawyer—you mean the bit was about two hundred feet from the bottom of the well?

A. Yes.

Q. What were you doing at that time, were you trying to come out of the well?

A. We were coming out.

Q. What happened?

A. The force was off the end, on the bit, and it was—there was ditching and heaving in from the shale, that heaved up against the collar and bit and caused it to stick.

Q. That was the second time it had stuck?

A. Yes.

Q. Then did you have to loosen the bit?

A. We poured in oil.

Q. What do you mean by that?

A. We pumped oil down the well, the drill pipe.

Q. How much oil was poured into the well for

(Testimony of Joseph Faria, Jr.)

that purpose? A. About eight barrels of oil.

Q. Then what did you do?

A. We let it stand there for a while.

Q. How long?

A. About eight hours, I imagine.

Q. Then what happened?

A. The drillers, they tried to pull it out. They were not able to get it out.

Q. Then what happened?

A. Then they circulated, circulated that oil out of the well.

Q. Where did that oil go?

A. It went on down the hill.

Q. During this period of time, do you know anything about the [117] weight of the mud that was being used?

A. It was 115 pounds, 114 or 115 pounds of mud.

Q. Did you have to employ a specialist again this time? A. Yes.

Q. For the purpose of your mud?

A. Yes.

Q. Who?

A. Ed Mohr of the Baroid people.

Q. What is Baroid?

A. Baroid is a mud weight—it is a material that is used to increase the weight of the mud you have in your well.

Q. Do you know the weight of the mud that had to be used for the purpose of drilling the well when you got the first job you have described in 1943?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. What was the weight of the mud at that time?

A. The mud, I would believe it was about ninety-six pounds.

Q. On this second occasion when you were down about forty-nine hundred feet in 1944, what weight of mud did you have to use?

A. We had to use 115-pound mud.

Q. Were any tests made, if you know, as to salinity or the salt content of the mud and water coming out of the well at this period?

A. Mr. Ed Mohr made a salinity test.

Q. What happened on or about November 29, at 11 o'clock a.m., if you know?

A. The well blew in.

Q. What do you mean by "blew in?"

A. Well, the mud weight lightened up to 110 pounds, it was not heavy enough to hold the pressure of gas and oil down below there and it just lifted right on out the hole.

Q. What happened, describe it?

A. It blew it up in the air about eighty feet.

The Court: Were you there at the time?

A. (By the Witness): No, I was not there. This is what the men told me.

The Court: Well, there you are.

Mr. Bourquin: I move that answer go out.

The Court: Yes. You ought to put the witnesses on who know these things.

Q. (By Mr. Scampini): When did you arrive at the well?

(Testimony of Joseph Faria, Jr.)

A. When did I arrive at the well? Just after the well was under control.

Q. Approximately what time was this?

A. I would say about one o'clock.

Q. What were the men doing when you arrived there?

A. Well, when I got on the site, the well site there, near the driller, I met Mr. Mayes, the drilling superintendent, and I said to Mr. Mayes——

Q. No, no. Say what they were doing?

A. Well, what they were doing, I don't remember. Everything was at a standstill.

Q. What did you see at or on or about the well?

A. I noticed oil all over the derrick floor, rotary table, the draw works and tubing that was standing in the derrick. [119] There was a tubing there about, I imagine, about eighty feet in length that was standing there. I don't know how many joints. The oil was over the drill pipe and on the platform, the wind carried the oil over there.

Q. Did you see or did you make any study or observation of the mud fluid that came out of that well? A. Ed Mohr made a study of it.

Q. Did anybody else?

A. Not that I remember.

Q. What was done next after you appeared on the well?

A. I tried to get this drill pipe out and we found that it was hard to take out, so I hired Mr. Bradford.

Q. Who is Mr. Bradford?

(Testimony of Joseph Faria, Jr.)

A. He is a well experienced man in the oil fields and he knew about fishing, that is, trying to get stuck drill pipe out of a well.

Q. How long did it take you to get Mr. Bradford to come to the well?

A. He was there, if I remember right, just a day or so afterward.

Q. Then what was done?

A. Then we tried to jar the pipe loose and he took a pull on it and tried to see if he could pull it out. He couldn't do anything about it, so he went—tried again the Alaberton people with their pump to try to start circulation and we built the pump pressure up to 3,700 pounds, but they couldn't loosen that from the sanded part of the well, the pressure was not strong enough to do it. Then we decided to go on with the left-hand drill pipe to unscrew the pipe out.

Q. How long did that take?

A. Well, we worked there, if I remember right, three or four days, or a week.

Q. Were you able to unscrew, to extract all of the pipe from the well?

A. No. They could only go down as far as the bottom of—not quite the bottom on the casing, about ten feet from the bottom.

Q. What did you observe, or what did you discover there? A. The casing was collapsed.

Q. Do you know that of your own personal knowledge?

A. Well, that is what they told me.

(Testimony of Joseph Faria, Jr.)

Mr. Bourquin: We ask that go out.

Mr. Scampini: That may go out.

Q. I will show you here a photograph, Mr. Faria, and I will ask you to look at it and tell me whether or not you recognize it and can identify it?

A. Yes.

Q. What is that photograph?

A. That is a photograph of the derrick from the top looking downward towards the floor of the derrick.

Q. When was that taken, if you know?

A. I don't quite remember, but I believe it was taken after the blow.

Q. After the blow. By whom?

A. By McBride.

Q. Under your direction and supervision?

A. Yes.

Mr. Scampini: I offer this in evidence as Defendants' next exhibit in order. [121]

The Court: It may be admitted.

(Thereupon the photograph in question was received in evidence and marked Defendants' Exhibit 18.)

[Defendants' Exhibit 18 appears on Page 1244.]

Q. (By Mr. Scampini) At or about this time, did any unusual developments take place at Honker Bay just across the river from the property of the Cal Bay Corporation, and I am now pointing to a red spot on the map which has been marked For

(Testimony of Joseph Faria, Jr.)

Identification as Defendants' Exhibit 12 (11); opposite the yellow spot, did anything develop there that you observed or noticed? A. Yes.

Q. What happened there?

A. They made a gas discovery.

Q. Do you know what happened; state what happened?

A. It came out in the *Oil World* that the Standard Oil Company had made a discovery of a gas well.

Q. Did you see anything going on at Honker Bay at that time?

A. You could see the derrick and they were drilling over there in that part of the country.

Q. You had then received information by reading about it; is that right?

A. My engineer mailed me a clipping showing what had happened over there.

Mr. Bourquin: Your Honor, I don't know how that affects this case.

The Court: Well, Counsel——

Mr. Scampini. I will contend——

The Court: I don't think the testimony concerning what [122] happened based upon articles in the magazine is competent.

Mr. Scampini. I will consent it may be stricken out, your Honor.

The Court: It is hard to say what might be a discovery over there. The vice of it is we might——

(Testimony of Joseph Faria, Jr.)

Mr. Scampini. We will get that out through our experts, your Honor.

The Court: The motion will be granted. The testimony with reference to this so-called gas strike across the river will be stricken. The Jury will disregard it.

The Clerk: Counsel, for the purpose of the record, that map is No. 11.

Mr. Scampini: No. 11. Thank you.

Q. Well, after hiring Mr. Bradford, were you able to extricate all of the pipe down in the well?

A. No.

Q. What did you decide to do then?

A. We decided to——

Mr. Bourquin: We submit, your Honor, it is what was done.

The Court: Well, it is taking a long time, Counsel. I don't want to appear to be impatient, but so much of this testimony, Counsel, is taking hours. I think it is rather time-consuming.

Mr. Scampini. What I have in mind, your Honor, the opening statement of Counsel, he practically inferred to the Jury that they proposed to prove that these men dillydallied [123] along and everything happened to them as though they were doing it on purpose. I am trying to show the good faith of the operation.

The Court: I don't think Counsel made any statement to that effect. He merely pointed out the various things that happened. This witness is the

(Testimony of Joseph Faria, Jr.)

owner and, of course, being the man who owned the leases or representing the company he is entitled to testify as to physical facts concerning the property and what he knows about it, but when it comes to these matters that unquestionably, I can see, you have other people here who actually participated and can testify. It would save time if you would go to that, rather than have the witness just give a narrative of these things. You had somebody there tending the oil well who knows about these things. You should get your information from those people.

Q. (By Mr. Scampini) What month was it in 1944 that Mr. Bradford was hired by you to work on the well?

A. If I remember right, around the first of December, 1944.

Q. Did Mr. Bradford work on the well at or about December 15, 1944?

A. Yes, I believe he was.

Q. I now show you what is a photostat of a notice of termination of right to possession of Parcels 58 and 59 in this action, and I will ask you when you were served with a notice of that character?

A. There seems to be—the 20th of December is here. [124]

Q. When were you served with it?

A. Along about the 15th, I think.

Q. The 15th of December?

A. I think it was.

Q. What did you do when you were served with that notice?

(Testimony of Joseph Faria, Jr.)

A. Well, we ceased operations.

Q. Did you have any conference with the representatives of the Navy?

A. Yes. We were called down to Captain Williams' office.

Q. What was said by you and what was said by Captain Williams?

Mr. Bourquin: Just a minute, your Honor.

A. When I arrived there, Captain Williams——

Mr. Bourquin: We submit the notice speaks for itself. We will object to the conversation of the witness with the Navy personnel or anybody else as hearsay and incompetent, irrelevant and immaterial.

The Court: I will sustain the objection to the conversation.

Mr. Scampini: I now offer in evidence as Defendants' Exhibit next in order the Notice of Termination of Right to Possession of Parcels 58 and 59 in this action, and I ask permission to read the contents into the record. It is rather short.

The Court: It may be admitted.

(Thereupon the document in question was received in evidence and marked Defendants' Exhibit 19.)

[Defendants' Exhibit 19 appears on pages 1245.] [125]

The Court: This is the notice that is referred to in that stipulation you read to the Jury this morning?

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: Yes, your Honor; that's right.

"To defendant Cal-Bay Corporation, a corporation, and to Messrs. Fitzgerald, Abbott & Beardsley, its attorneys:

"You and Each of you will please take notice as follows:

That pursuant to the Order of Court modifying Order for Immediate Possession as to Parcels 58 and 59 in this action, dated September 28, 1944, your right to possession of Parcels 58 and 59, as the same are designated in the Complaint and Order for Immediate Possession on file herein, is hereby terminated; that defendant Cal-Bay Corporation may continue in possession and may continue its operations on said Parcels 58 and 59 until thirty (30) days after service of this Notice as provided in said Order of Court; and that thereupon defendant Cal-Bay Corporation shall forthwith vacate said Parcels 58 and 59 and shall surrender the same to plaintiff.

"Reference is made to the said Order of Court dated September 28, 1944, which is incorporated in this Notice by reference.

"Dated, December 15, 1944.

/s/ M. MITCHELL BOURQUIN

Special Assistant to

The Attorney General

Attorney for Plaintiff."

(Testimony of Joseph Faria, Jr.)

Underneath the signature appears the following:

“Receipt of a copy of the foregoing Notice of Termination of Right to Possession of Parcels 58 and 59 in this Action is hereby acknowledged, this 15th day of December, 1944.

“FITZGERALD, ABBOTT &
BEARDSLEY,

Attorneys for defendant
Cal-Bay Corporation”

Now, may it please the Court, when this morning in the reading of the stipulation there was not read into the record the Order of Court dated September 28, 1944, which is referred to in this Notice, the the stipulation dated September 18, 1944. It appears from the trial and records in this proceeding that subsequently there was filed a Petition for Order Modifying Order of Immediate Possession as to Parcels 58 and 59, and that on September 28, 1944, your Honor sitting in this Court entered an Order Modifying Order of Immediate Possession as to Parcels 58 and 59.

Mr. Bourquin: That is correct.

The Court: The order modifying to conform with the stipulation?

Mr. Scampini: Yes, your Honor. May I know

(Testimony of Joseph Faria, Jr.)

read into the [127] record the order made by your Honor?

The Court: Yes.

Mr. Scampini:

“Order Modifying Order of Immediate
Possession as to Parcels 58 and 59

“Upon reading the Petition of plaintiff, United States of America, and defendant, Cal-Bay Corporation, and good cause appearing therefor, it is hereby ordered that the Order for Immediate Possession heretofore issued out of this Court on July 24, 1944, be and it is hereby amended in respect to said defendant and Parcels 58 and 59 as the same are designated in the Complaint and said Order for Immediate Possession on file herein so that said defendant may continue in possession and may continue its operations on said Parcels 58 and 59 until thirty (30) days after service by plaintiff on said defendant, or on its attorneys herein, of written notice of the termination of said right to possession; that thereupon said defendant shall forthwith vacate said parcels and shall surrender the same to plaintiff.

(Testimony of Joseph Faria, Jr.)

Done in Open Court this 28 day of September, 1944.

LOUIS E. GOODMAN,

Judge, United States District
Court Northern District of
California. [128]

Q. Will you now state, Mr. Faria, what was done by you in order to comply with that notice to vacate the premises within 30 days?

Mr. Bourquin: Is that material or relevant? I am wondering, your Honor, if it has something to do with the value of the property.

The Court: After the service of this notice did the defendants proceed with the well any further?

Mr. Scampini: They proceeded to abandon the well as required in the event that drilling ceased, your Honor. They had to remove within thirty days from the premises.

Mr. Bourquin: There is no objection to that being shown, your Honor.

The Court: Is it necessary to go into any detail in that respect? Did they take the casing out and gather in the material that was around there?

Mr. Scampini: That is about all.

The Court: Just let him state that. I guess counsel would accept that statement without the testimony of the witness, as to what was done.

Mr. Bourquin: Yes, your Honor. We will stipulate that nothing was done after December 15th.

(Testimony of Joseph Faria, Jr.)

but to remove the rig and recover what of their equipment they could take away, plug the hole, and abandon it.

Q. (By Mr. Scampini) Mr. Faria, at or about October, 1944, [129] prior to the receipt by you of this notice, did you make any purchase of casing for the purpose of continuing your drilling?

A. Yes. I made a purchase of five——

Mr. Scampini: Wait a minute. Counsel wishes to make an objection, I think.

The Court: Maybe you are unduly anticipating him.

Mr. Scampini: I thought he was going to object.

Mr. Bourquin: I think, to be consistant, your Honor, we will have to object to that as irrelevant and immaterial. It has no bearing on the question of market value. I thought he had his well cased.

Mr. Scampini: Down to 4373 feet, and he bought this casing for the purpose of carrying the casing down to 4900 feet, and, I take it, that is all part of the cost of this well to our client. It was all purchased in reliance on that stipulation, if it please the court.

The Court: I beg your pardon?

Mr. Scampini: It was all purchased in reliance on the stipulation.

The Court: Do I understand you have any objection or not to it?

Mr. Bourquin: To that extent, your Honor, I

(Testimony of Joseph Faria, Jr.)

am not going to object, if counsel and the witness can agree between themselves as to whether it was 5000 feet, as this witness says, or 6000, as Mr. Scampini stated. [130]

Mr. Scampini: I think you will find it was 6000 feet, and there was a reason for buying 6000 feet, counsel.

The Court: I think the court will allow the testimony as to how much casing was bought to go into the record, and we will take care of the matter of instructions as to the standards of determining value at the proper time.

Q. (By Mr. Scampini) Mr. Faria, I again ask you the question, did you have occasion to purchase any casing for the continuation of drilling?

A. Yes.

A. How many feet of casing did you buy?

A. 5000 feet.

Q. Why did you buy 5000 feet?

A. To develop the well.

Q. How many feet of casing were in the well at that time?

A. 4343 feet of 7-inch casing.

Q. What size casing did you buy on the last occasion?

A. 4 $\frac{1}{2}$ inches in diameter.

Q. Mr. Faria, referring to parcels 58 and 59, namely, the land of Edward Faria and Mary Faria, in respect to those two parcels it is a fact in the

(Testimony of Joseph Farna, Jr.)

Q. Now that the lease taken by you was then owned by Cal Day Corporation, is that right?

A. Yes.

Q. With the exception of 23.52 acres on the southeast corner of parcel 39, which had been retained by you, is that right? A. Yes.

Q. Have you any opinion as to the value of the leasehold estate of Cal Day Corporation held by it in parcels 38 and 39 as of January 15, 1944?

A. Yes. [121]

Mr. Bourquin: Are you asking now the question as to the value of the lease?

Mr. Scampane: The leasehold estate.

Mr. Bourquin: Your Honor, we believe the Code requires that the property be valued as a unit.

The Court: You want the value of the oil rights as a unit?

Mr. Bourquin: The oil rights, and questions between lessor and lessee are matters between themselves with which the condemnor, the Government, is not concerned; therefore we object to this question on that ground.

Mr. Scampane: It is please the court, it would be entirely satisfactory to us to evaluate these mineral rights on a unit basis, but I construe section 2298 of the Code of Civil Procedure differently from counsel on the other side, and I do not wish at this time to offer proof which may not be sustained after the proof has been introduced in the record.

(Testimony of Joseph Faria, Jr.)

am not going to object, if counsel and the witness can agree between themselves as to whether it was 5000 feet, as this witness says, or 6000, as Mr. Scampini stated. [130]

Mr. Scampini: I think you will find it was 6000 feet, and there was a reason for buying 6000 feet, counsel.

The Court: I think the court will allow the testimony as to how much casing was bought to go into the record, and we will take care of the matter of instructions as to the standards of determining value at the proper time.

Q. (By Mr. Scampini) Mr. Faria, I again ask you the question, did you have occasion to purchase any casing for the continuation of drilling?

A. Yes.

A. How many feet of casing did you buy?

A. 5000 feet.

Q. Why did you buy 5000 feet?

A. To develop the well.

Q. How many feet of casing were in the well at that time?

A. 4343 feet of 7-inch casing.

Q. What size casing did you buy on the last occasion?

A. $4\frac{3}{4}$ inches in diameter.

Q. Mr. Faria, referring to parcels 58 and 59, namely, the land of Edward Faria and Mary Faria, in respect to those two parcels it is a fact in the

(Testimony of Joseph Faria, Jr.)

record that the lease taken by you was then owned by Cal Bay Corporation, is that right?

A. Yes.

Q. With the exception of 73.51 acres on the southeast corner of parcel 59, which had been retained by you, is that right? A. Yes.

Q. Have you any opinion as to the value of the leasehold estate of Cal Bay Corporation held by it in parcels 58 and 59 as of January 15, 1944?

A. Yes. [131]

Mr. Bourquin: Are you asking now the question as to the value of the lease?

Mr. Scampini: The leasehold estate.

Mr. Bourquin: Your Honor, we believe the Code requires that the property be valued as a unit.

The Court: You mean the value of the oil rights as a unit?

Mr. Bourquin: The oil rights, and questions between lessor and lessee are matters between themselves with which the condemnor, the Government, is not concerned; therefore we object to this question on that ground.

Mr. Scampini: If it please the court, it would be entirely satisfactory to us to evaluate these mineral rights on a unit basis, but I construe section 1248 of the Code of Civil Procedure differently from counsel on the other side, and I do not wish at this time to offer proof which may not be sustained after the proof has been admitted in the record.

(Testimony of Joseph Faria, Jr.)

I take it under section 1248 of the Code of Civil Procedure the interests of the lessors and the lessees must be valued separately. If we can agree on a valuation in its entirety, I do not think we will have much difficulty in allocation thereafter, but I do not wish to have the record or the trial proceed on a method of valuation which may not be in conformity with the statute.

The Court: You are seeking to elicit testimony as to the lessor's royalty separately and as to the——

Mr. Scampini: The lessee. [132]

The Court: The value of the mineral rights to the lessee?

Mr. Scampini: Yes, because, may it please the court, there is an obvious difference between a lessee's interest and a lessor's interest. One is only a matter of renting and the other has obligations to perform.

The Court: I think it should be admitted. The court will instruct in any event they cannot allow more for the lessor and the lessee's interests separately than their value would be for the whole.

Mr. Scampini: I think that is correct.

The Court: And we do have a little difference in the case of an alleged oil property than we do in the case of ordinary leases of real property.

Mr. Scampini: An oil and gas lease, as stated in the decisions of our Supreme Court, with which your Honor is undoubtedly familiar, is an interest in

(Testimony of Joseph Faria, Jr.)

real estate, and the lessee's interest is an interest that is deemed to be real property in this state, and I do not see how we can consistently value the lessor's and the lessee's interests together, as much as I would like to do so, and save a lot of time.

M. Bourquin: Any tenant's lease is real property.

Mr. Scampini: I respectfully disagree with counsel on the other side. I think in most cases leases have been held to be personal property, but not oil and gas leases.

Mr. Bourquin: Your Honor has ruled that this question may be answered, I understand. [134]

The Court: I think it would be proper for the witness to answer this question, and if it becomes appropriate at a later time and the matter goes to the jury for a valuation, it can be pointed out at that time if there is any valuation of these respective interests, there cannot be more awarded separately than there would be awarded if there were an award for the whole. I think the Supreme Court has pointed that out in some decisions.

Mr. Bourquin: I think so. Your Honor, the question seems to me to be academic. It is a position that has its effects under certain circumstances, and for that reason, your Honor, I will ask that the record note an exception to the ruling on that.

The Court: If it appears that at a later time there can be a valuation of the whole, and if there

(Testimony of Joseph Faria, Jr.)

is such valuation of the whole, then I can at such time instruct the jury to disregard this testimony; but upon counsel's statement that that is the way he wants to proceed now, he wishes to offer some testimony as to the values of the lessee's interest—what do you wish this witness to testify to now?

Mr. Scampini: The value of the lessee's interest. He is only a lessee, your Honor.

Mr. Bourquin: It seems to me it is like any undivided interest, your Honor. If we have several undivided interests in the property among several people, ordinarily we would not [134] give the court or the jury the problem of taking it piecemeal according to each undivided interest, and which would relieve the condemnor of any burden of having to analyze the matter and meet it in that fashion.

The Court: Of course, Mr. Bourquin, a proper standard, as you know, is what would a willing buyer pay to a willing seller who had a lessee's interest for that mineral right, and at the same time there might be a willing buyer who might offer a willing seller who had a lessor's interest a certain sum.

Mr. Bourquin: I can readily concede that, your Honor, but here we are not buying the lessor's interest without the lessee's interest. We are buying the whole. That is what we are buying.

Mr. Scampini: You are taking the whole.

Mr. Bourquin: No, we are buying it.

The Court: If you were taking the whole you

(Testimony of Joseph Faria, Jr.)

would be forcing both the lessor and the lessee to sell you their respective interests. That is condemnation. Wouldn't the value be what a willing buyer and a willing seller agree upon for those respective interests because they have been separated, although you should not be required to pay more than a willing buyer would pay a willing seller who had both the lessor and the lessee's interests in the land. It is a somewhat unusual question because of the fact that in oil transactions lessors and [135] lessee's interests are separately bought and sold, on a somewhat wide scale, as differentiated from the ordinary lease of a business property of some kind, where occasionally the lease is dealt in, but more frequently not.

Mr. Scampini: I might say, your Honor, in view of those stipulations which have now been read into the record, there is no other way we can proceed, because as to Mae Roche, Mary Faria, and Edward Faria, it is specifically provided that they reserve certain mineral rights under certain instruments.

The Court: Of course, if this is not real property, as you say, I doubt whether this witness would be a proper expert to say how much a willing buyer would pay for a lessee's interest.

Mr. Scampini: I am satisfied, your Honor, that the law will sustain my position that a lease for gas and oil exploration is real property under the law of the State of California. I have passed on many legal titles involving deeds of trust and

(Testimony of Joseph Faria, Jr.)

mortgages on gas leases, and I am satisfied that that is the law.

The Court: I will allow the question. Counsel may have an exception noted, and if the interests of justice require, we can reconsider the matter at a later stage in the trial.

Mr. Scampini: Perhaps in the course of this conversation the witness may have forgotten the question, so I will reframe [137] the question and again ask it.

Q. In respect to parcels 58 and 59, namely, the lease on the property of Mary Faria, which is parcel 59, and the lease on the property of Edward Faria, which is parcel 58, and which leases were on December 15, 1944, or on January 15, 1945, owned by Cal Bay Corporation, have you any opinion as to the value of that lease then owned by Cal Bay Corporation? A. Yes.

Q. The fair market value?

A. Yes, I have an opinion.

Q. What is your opinion? Just a moment, Mr. Faria. Did you make that memorandum that you were looking at? A. Yes.

The Court: What are you asking for? An amount of money?

Mr. Scampini: Yes.

The Court: State what it is, and then if he wants to give any reason for it, he can do so.

Q. How much was it worth?

A. Parcel 59, Mary Faris, 367 acres at \$1000 per acre, \$367,000.

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Scampini) When you say 367 acres, what does that represent?

A. That represents the property that Mary Faria owns.

Q. And which was taken by the plaintiff?

A. Yes.

The Court: This is just for the mineral rights he is speaking of.

Q. (By Mr. Scampini) You are just speaking of the lease, aren't you? A. Yes.

Q. The mineral rights under the lease?

A. Yes. [137]

Q. With respect to parcel 58 of Edward Faria, how many acres are involved in that parcel? 5 acres, isn't it?

A. Five acres.

Q. What do you consider the fair market value of the lease of Cal Bay Corporation to have been on January 15, 1945?

A. Well, that would be \$1000 an acre for the five acres, or \$5000 and——

Q. That is all now. Let me ask the next question.

Mr. Bourquin: Wait a minute.

Mr. Scampini: Pardon me?

Mr. Bourquin: I do not think counsel is entitled to cut off his own witness, your Honor.

The Court: Is there something you want to add to your answer? A. No.

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Scampini) In respect to parcel 57, which is the parcel of Mae E. Dutra, how many acres are involved in that parcel? A. 5 acres.

Q. And that lease was owned by Cal Bay Corporation, was it not? A. Yes.

Q. Have you any opinion as to the fair market value of the lease owned by Cal Bay Corporation on July 24, 1944, which is the date of taking of possession of that parcel, in respect of parcel 57?

A. Yes.

Q. What is your opinion?

A. \$5000 for that five acres. [138]

Q. How many acres of the Mary Faria lease were left to Cal Bay Corporation after the Government's taking under this action?

A. There was 208 acres left.

Q. Were the 208 acres the amount or the amount that was left?

A. The Navy took 218 acres less the amount from the 367 acres, which would make a balance of 249 acres.

Q. Have you any opinion as to whether or not the leasehold——

Mr. Bourquin: What did he say there, 367——

Mr. Scampini: 441, my figures are.

The Witness: Yes, 441.

Mr. Bourquin: If we are going to take these figures as any key to the amount of property that is involved, I do not think this witness has his arithmetic straightened up.

(Testimony of Joseph Faria, Jr.)

The Court: Let us not waste time, gentlemen, and take the time of the jury. These are matters that are not in dispute. Somebody state how much acreage there was. There is no dispute about it.

Mr. Scampini: I know what they are if I may ask leading questions.

The Court: Make a statment on this, will you, counsel, and let us move along? Make a statement of what the acreage is.

Q. (By Mr. Scampini) Mr. Faria, in the assignment of the lease that you made to Cal Bay Corporation you only assigned 367 acres of the 441, isn't that right?

A. That is right. [139]

Q. And you kept the other 73 acres for yourself? A. Yes.

Q. Of the 367 acres which you assigned the Government took 208 acres, is that right?

A. Yes.

Q. Which left 158 acres in Cal Bay which were not taken, isn't that right? A. Yes.

Q. Now, have you any opinion as to the damage suffered by Cal Bay Corporation in respect to the 158 acres left to it as the result of the Government taking of the 208 acres? A. Yes.

Q. What is your opinion, or what is the damage in your opinion? A. \$61,000—

Q. I am asking you what is it? \$61,000?

A. \$61,000.

Q. Now, going to the Joseph Faria leases which

(Testimony of Joseph Faria, Jr.)

you retained, and particularly to the Mary Faria, where you retained 73 acres, in that 73 acres the Government took approximately 10 acres, isn't that right? A. Yes.

Q. Have you any opinion as to the fair market value of the 10 acres taken from you in parcel 59 as of January 15, 1945?

A. Yes. You mean the value of the 10 acres?

Q. Of the 10 acres.

A. \$375 per acre, or \$3750.

Q. In respect to the Geraldine Faria lease of 228 acres, which was retained by you, the Government took practically nothing of that, is that right?

A. Yes.

Q. Just a slight corner of about a half an acre, is that right? A. Yes.

Q. But in respect to the Bollman lease, parcel 3-A, the amount [140] of acreage held by you on the lease aggregated 566 acres more or less, and of that 566 acres the Government took 512 acres, or thereabouts, and left 53 acres, is that right?

A. Yes.

Q. Have you any opinion as to the fair market value of the lease owned by you on July 24th in respect to the 512 acres of land taken by the Government in the Bollman lease, parcel 3-A?

A. Yes.

Mr. Bourquin: May I interrupt? Your Honor, yesterday we offered to accept this Bollman claim, but after that counsel put Mr. Bollman on and he has raised a question as to the validity of that lease

(Testimony of Joseph Faria, Jr.)

in this record. That therefore compels me, in my capacity here, merely serving the Government, to enter an objection. You asked him to evaluate the property which was initially subject to the Bollman lease, as described by the question. That is irrelevant and immaterial upon the ground that according to the testimony here the lease appears to have expired or to have lapsed before the taking.

The Court: I suppose upon the theory that it is an agreement that is required to be in writing?

Mr. Bourquin: Yes, it would be, your Honor.

Mr. Scampini: I respectfully submit, if it please the Court, that an extension of the lease for which a consideration has been paid and received can be oral as well as in writing.

The Court: The witness Bollman testified that he got the [141] 100 shares for his trouble that he went to in going to see a lawyer, and other things, as I remember his testimony. This witness testified he gave him the 100 shares for a renewal of the lease.

Mr. Scampini: That is right.

The Court: If the parties are unable to agree as to the terms of the oral agreement, I do not know whether there would be something substantial enough to go to this jury. You say there is authority to the effect that a lease required to be in writing may be renewed by an executed oral agreement?

Mr. Scampini: Yes, your Honor.

The Court: Have you authority for that?

(Testimony of Joseph Harris, Jr.)

Mr. Scamman: May I say this: I do not wish to concede counsel's point at all, but I am prepared to say that there has always been a question in my own mind as to the legal effect of that oral agreement, and inasmuch as the Government has only taken 132 acres of what we consider to be mineral land in this 562 acres, rather than to have a ruling which may be excepted to by counsel on the other side and thereafter appealed upon in the event he is not satisfied with the verdict, or we appeal, in the event we are not satisfied with the verdict, I am prepared to accept your Honor's ruling on the subject matter.

Mr. Bourquin: I will say in response to that that had counsel only taken the stipulation when it was offered to him and saved time, and not put the man on the stand, we would [142] not have this question in here.

Mr. Scamman: I never asked questions of Mr. Bollenan when I received the stipulation. I said I had no questions, but then you proceeded to question him.

Mr. Bourquin: Before Bollenan was ever called to the stand we told you we would accept that.

Mr. Scamman: Under the circumstances I do not see why you should object now.

Mr. Bourquin: That have compelled is so. I do not know any attorney who has any right to waive any client's rights, but I am aware of plenty of rulings that no one employed in the service of the Government has any right to waive the Govern-

(Testimony of Joseph Faria, Jr.)

ment's rights, and that is the position you put me in when you declined to accept the stipulation and put Mr. Bollman on the stand.

The Court: What is the state of the record now? You have objected to the testimony of the witness on the ground that there was no lease?

Mr. Bourquin: Yes, your Honor. The lease had lapsed.

The Court: I will sustain the objection at this point.

Q. (By Mr. Scampini): With respect to the lease of Joe Chavez on 414 acres of land, Mr. Faria, the Government in its complaint took 177 acres described as parcel 71, isn't that right? A. Yes.

Q. Have you any opinion as to the fair market value of the lease [143] owned by you on July 24, 1944, in respect to the 177 acres taken by the Government? A. Yes.

Q. What is your opinion? A. \$100.

Q. Now, the lease of the Joe Chavez property lies immediately adjoining, does it not, the well which was drilled by the Standard Oil Company, known as the Keller well? A. Yes.

Q. Have you any opinion as to what bearing the Keller well abandonment had on that lease?

Mr. Bourquin: I will object to that on the ground it is incompetent. Counsel offered the man to prove market value. If he is so insecure about his values that he needs to have his witness bolstered with such questions as that?

(Testimony of Joseph Faria, Jr.)

The Court: I think the question is incompetent. I will sustain the objection.

Q. (By Mr. Scampini): Going back to the Mary Faria lease of 73 acres owned by you, 63 acres remained after the Government took 10 acres, isn't that right? A. Yes.

Q. Have you any opinion as to the damage, if any, suffered by the 63 acres retained by you by reason of the Government taking of the rest of the property? A. Yes.

Q. What is that damage? A. \$3750.

Q. With respect to the Geraldine Faria lease of 228 acres, of which no part was taken by the Government, have you any opinion as to the damage suffered by that lease retained by you by reason of the Government taking the rest of the property, leases in [144] that vicinity? A. Yes.

Mr. Bourquin: I object to that as irrelevant and immaterial. If no part was taken it follows under the rule there is no severance.

Mr. Scampini: There was a half acre taken, your Honor, and it is part of a unit, a unitary development as shown by the leases in evidence.

The Court: Yes, but you have to show the part taken caused the damage to the part from which it was taken. In other words, the damage arises out of the taking of the part.

Mr. Bourquin: I understood you to say that no part was taken. You must have said that inadvertently.

Mr. Scampini: I must have done so, because .63 of an acre was taken.

(Testimony of Joseph Faria, Jr.)

Mr. Bourquin: We will withdraw the objection, your Honor, if there was any taken.

The Court: You had better reframe your question.

Mr. Scampini: Yes, your Honor.

Q. In respect to the Geraldine Faria lease of 228.55 acres of land, of which the Government took .65 acres, have you any opinion as to the damage caused to the remainder of the leasehold estate by reason of the Government's taking? A. Yes.

Q. What is your opinion? A. \$44,000.

Mr. Bourquin: How many acres in all are there in the Geraldine Faria piece? [145]

Mr. Scampini: 228.55 acres, of which the Government took .65. I think I am about through with this witness, your Honor. May we ask for the usual recess at this time?

The Court: We will take the afternoon recess at this time, ladies and gentlemen. Please bear in mind the admonition of the court. [145-a]

JOSEPH FARIA, JR.

recalled on behalf of defendants.

Direct Examination

(Resumed)

Mr. Scampini: May it please the Court, I have only two questions. One of them is the result of an error which I made myself in the asking of the question that I desire to have corrected.

(Testimony of Joseph Faria, Jr.)

Q. Mr. Faria, referring to the Geraldine Faria lease, rather than the Mary Faria lease, Parcel 59 retained by you, 73 acres of that lease was retained by you; isn't that right?

A. That's right.

Q. Of the 73 acres, how many acres were taken by the Government? A. 63 acres.

Q. When I asked you the question before recess, I asked you the question as to whether or not it was not true that it was ten acres? A. Yes.

Q. Of the 63 acres taken by the Government, have you an opinion as to the fair market value of those 63 acres? A. Yes.

Q. What is your opinion?

A. \$375 an acre, or \$23,625.

Q. Have you any knowledge as to the exact amount of money spent by Cal Bay Corporation, by that I mean personal knowledge, for materials and labor and supplies furnished in the course of drilling the Faria Well No. 1 on Parcel 59?

Mr. Bourquin: To which we will object, your Honor, as immaterial, and irrelevant, and no criterion of the market [146] value of the property taken.

Mr. Scampini: I respectfully submit that the fact a well exists on property is one of the material considerations in determining the market value of an oil and gas lease between a willing buyer and a willing seller in full possession and knowledge of

(Testimony of Joseph Faria, Jr.)

all the facts and circumstances appertaining to same. I don't see how you could separate the hole from the structure.

The Court: The cost is never a criterion in determining—it is always market value.

Mr. Scampini: Have I not the right to prove, if I can, that it is a reasonable cost, by other witnesses experienced in the cost of drilling a well?

The Court: Well, the witness may testify as an expert on the subject as to what the reasonable cost of putting in a well of this kind is, but this particular point is immaterial, because it may have been done providently or improvidently or expensively or cheaply. Those are factors that are not proper in determining the cost. You may show from different witnesses such matters but——

Mr. Scampini: I will reframe the question.

The Court: I don't know whether this witness is qualified. I say that in advance to your asking the question.

Q. (By Mr. Scampini): Have you drilled any oil wells, Mr. Faria?

A. Have I drilled any oil wells? [147]

Q. For your own account?

A. I haven't drilled any wells myself, but I have paid others to drill wells for me. I had Mr. Gibson drill a well for me, my partner.

Q. How many wells have you had drilled for your account? A. Five.

Q. You paid for the cost of those five wells?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. Is that in the last two or three years?

A. The last couple of years.

Mr. Scampini: I think that he is qualified.

The Court: Well, Counsel, I think you have to have someone who can testify as to what the reasonable cost of drilling this well is who must be competent in that business. I will sustain the objection.

Mr. Scampini: Will the record show an exception, your Honor? You may take the witness.

Cross-Examination

By Mr. Bourquin:

Q. Mr. Faria, before going to other phases of the matter, let me ask concerning the testimony you have given as to valuations and damage for properties not taken. Calling your attention to Geraldine Faria's piece, let's see, that lies on this map, if it is on the compass, north of the Maria Faria piece, joins with the Lena McKeen piece, joins with the Bollman piece, that is correct, isn't it? Mrs. Geraldine Faria's 64? A. Yes.

Q. Mary Faria, about there. To the southwest, it joins Lena [148] McKeen just to the south, kind of at the corner? A. Yes.

Q. Ralph Bollman, joins it on the southeast; that is correct? A. Yes.

Q. You said, and it is a fact, that Geraldine Faria's piece amounted to 228.55 acres before this taking; that is correct, isn't it?

A. That's right, yes.

(Testimony of Joseph Faria, Jr.)

Q. The Government in its taking here, took away from her acreage .65 of an acre, a little more than half an acre? A. Yes.

Q. You are valuing her property as on July 24, 1944? A. That's right.

Q. How much, in your opinion, was the market value of Geraldine's 228-acre piece just before the Government took away the .65 of an acre?

A. \$66,000.

Q. \$66,000. That is what her 228.55 acres were worth in the market, in your opinion, on July 24, 1944; is that correct? A. That's right.

Q. How much was her 228½ acres less the half-acre—the 228 acres after that, how much was the market value of that immediately after the Government had established its suit and its order of possession in effect on July 24, 1944?

A. \$44,000.

Q. In other words, then if we put it in the terms we use in condemnation suits, we would conclude from your figures that, in your opinion, her 228½ acres had been severed, or severance [149] damage, by the taking of the half-acre to the extent of approximately \$22,000? A. For the reason—

Q. Well, I am just asking you?

A. No, the whole was.

Q. Let me ask you, when you have given us, as you have given it, the conclusion her damage, severance damage, have you done it on the basis of the separation from her of the half-acre, that taking, or have you done it on the basis of some effect of

(Testimony of Joseph Faria, Jr.)

the whole Government taking over there on this project including that half-acre from her?

A. Yes.

Mr. Bourquin: Then, your Honor, we will move that that figure of his be stricken as not the proper representation of severance damages on the ground severance, I believe severance means, is recognized by law as the value of the whole piece less the value of the piece of an owner that was taken. I will put it the other way.

The Court: That is not quite right.

Mr. Bourquin: Severance is the difference between the value of the whole piece and the value of the remaining piece after a partition, before and after the taking and by virtue of the taking of her own property.

The Court: Well, simply stated, you mean that if a person has 600 acres and the Government takes 200 of the 600 acres, the Government has to pay for the 200 acres and if by the taking of that there was a resulting damage because of the severance to the 400 acres, the Government also has to pay the [150] amount of that damage?

Mr. Bourquin: Yes, your Honor.

The Court: That is severance damage. You are contending here this witness has testified that the severance damage does not arise by virtue of the cutting off of a part of this lady's property from another part, but arises because of the taking of a larger area of which this piece that was taken is only a part; therefore, that is not a basis of

(Testimony of Joseph Faria, Jr.)

valuing severance damage. What have you to say?

Mr. Scampini: My contention and the contention of my associate is to the effect these leases were held and owned by Cal Bay Corporation as a unit and considered as a unit in the development of the entire structure and the value resulting to the Geraldine Faria piece is affected just as violently by the Government's taking of the Mary Faria property, including the well as the Mary Faria property.

The Court: There is no authority that I know of that justifies the award of severance damages unless a part of the same owner's property is taken. It arises by virtue of that and not by some other taking.

Mr. Scampini: This is part of the same owner's property. This is not the property of Cal Bay Corporation. These leases were owned by Cal Bay. We are not interested in Mary Faria in this respect. The lease did not include merely the lease of Geraldine Faria, but includes the lease of Mary Faria—— [151]

Mr. Bourquin: I understood it was to establish a value of the Geraldine Faria property. With the question that counsel raises, they raised a question for us, I am willing to reserve the question if your Honor would like to do so for later determination. I understood it was to show Geraldine's piece was worth so much before the half-acre taken and so much after.

The Court: Yes.

(Testimony of Joseph Faria, Jr.)

Mr. Bourquin: I understood him to say on direct examination the damage was \$44,000 and on cross-examination he said it was \$22,000.

Mr. Scampini: I think he probably made a mistake.

Mr. Bourquin: Well, we can pass that, your Honor.

The Court: All right.

Q. (By Mr. Bourquin): Mr. Faria, in giving these various figures on valuations, you have a memorandum that you have used and by which you were able to tell us of the figures; is that correct?

A. Yes.

Q. That is correct? A. Yes.

Q. Are those your calculations? A. Yes.

Q. Made by yourself, alone? A. Yes.

Q. Do you have your log with you?

A. Yes; it is right here.

Q. You testified that on November 29, 1944, the well, you said, blew in. Will you look at the log for November 29, [152] 1944, and tell me if that is the expression recorded on the log, "blew in?"

A. It says it blew out.

Q. It says "blew out" in the log. That log is prepared by the men participating in the operations of the sinking of the well, was it?

A. Yes.

Q. You did not prepare it? A. No.

Q. I think you testified that you were there frequently and sometimes there were days you weren't there at all? A. That's right.

(Testimony of Joseph Paria, Jr.)

Q. Have you ever had any experience in oil and gas interests or explorations prior to the time that you referred to you took a part in an exploration at Santa Cruz? A. Not prior to that.

Q. When was that? A. In 1939.

Q. 1939. Prior to that time, had you ever been a rigger or driller or done any manual work around oil or gas explorations? A. No.

Q. Have you ever done any work of a rigger or driller or manual worker around a gas or oil exploration? A. No.

Q. Never have. Have you ever participated in it in any way?

A. Only with the little work I did around this well here.

Q. Only the little work you did around the well here? A. And the one in Santa Cruz.

Q. And the one in Santa Cruz. Did you ever accept a regular role on that crew on this well in the course of exploration [153] in 1943 or 1944?

A. I don't quite understand what you mean.

Q. Do you know what the membership of an exploration crew or drilling crew consists of?

A. Yes, three shifts.

Q. Do you know what each shift consists of?

A. Around six or seven men.

Q. Do you know what the function or assignment of each man is?

A. The driller keeps a record of what goes on. He has to keep a log for the well of everything that

(Testimony of Joseph Faria, Jr.)

is carried on, because it is kept for a record for the Division of Oil and Gas of the State. We have to have a record of that well.

Mr. Bourquin: We will ask that answer stand out as not responsive.

The Court: Yes.

Mr. Bourquin: May I have the question read, Mr. Gagan?

The Court: He wants to know what each man in the crew does.

A. (By the Witness): Each man's job, well, the driller is—the head driller, he does the drilling, he takes care of the parts, the machinery that drills the hole. Then the derrick man. That derrick man, he is on top himself, he takes care of the drill pipe when it comes up, when they pull out of the well they come back down in the hole, he takes care of that. There are men who handle the tongs, they have to handle these tongs, fasten them onto the drill pipe as it is coming [154] out, either to tighten it or loosen it.

Q. What are they known as, the men who handle the tongs?

A. Well, we call them roughnecks.

Q. You call them roughnecks, the men who handle the tongs? A. Yes.

Q. What others? A. Cathead.

Q. Any others?

A. There is a drilling superintendent and the fireman.

Q. Did you ever assume any of those assign-

(Testimony of Joseph Faria, Jr.)

ments in the exploration of this well, either in 1943 or 1944?

A. I don't know what you mean. I don't quite get you.

The Court: He means, did you ever regularly perform the duties of any one of these men that you describe?

A. (By the Witness): No, I did not.

Q. (By Mr. Bourquin): Did you ever do that on the Santa Cruz exploration? A. No.

Q. So that you never did assume a regular role?

A. No.

Q. In the exploration of any oil or gas property?

A. That's right.

Q. You said that you had some interest in oil or gas properties, I believe you said oil, down near Bakersfield? A. Yes.

Q. When did you first acquire any interest in oil or gas there?

A. I acquired this in Maricopa in 1944.

Q. After the Faria exploration had been together and run [155] along in 1943? A. Yes.

Q. Did you ever acquire any other oil or gas interest prior to that time?

A. No; only the one in Santa Cruz.

Q. What about that one in Santa Cruz, what result did you get down there?

A. Well, there was only a shallow well.

Q. What was the result?

(Testimony of Joseph Faria, Jr.)

A. We got a showing; we didn't care to spend any more money and then we quit it, abandoned it.

Q. Was it a dry hole, in the parlance of oil and gas developments?

A. I don't consider it a dry hole.

Q. Did it develop any commercial quantity?

A. No.

Q. What do you call a dry hole yourself?

A. A dry hole is when you make a fair test by going through all the formations that is required to disprove a field, that there is nothing by going any deeper as recommended by geologists, by the reading in the geological column; if there is no further drilling, it is a dry hole, or there isn't anything worth while, there isn't anything on it.

Q. If there isn't anything worth while, it is a dry hole?

A. No. You drill the property to the depth as recommended and no further drilling, that is considered a dry hole.

Q. If you get any token quantities of oil or gas, would you say that was not a dry hole?

A. I would say it is not a dry hole, no, because we did not get an oil showing. [156]

Q. In your view of the matter, a hole is not a dry hole if you get any oil or gas showing at all?

A. Right.

Q. Irrespective of the question of whether quantities sufficient to repay the investment, the cost of development?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. Mr. Faria, what has been your own business?

A. My own business?

Q. Yes.

A. I have been farmer and a farm contractor and my own farm and own these oil wells, producing oil wells, in Maricopa. [156-a]

Q. You told us your first connection with any oil wells was in 1939 in Santa Cruz?

A. That is right.

Q. And your next connection with any, except you were raised and lived near this exploration here, was in 1944, when you acquired some interest near Bakersfield?

A. That is right.

Q. What have you done otherwise?

Mr. Scampini asks if he may interrupt.

Mr. Scampini: If it please the court, I have a witness here who is being detained. I was wondering if we are going on on Monday, so I might advise him.

The Court: What was that?

Mr. Scamini: I was wondering whether you intended to proceed on Monday, because I have a witness who wishes to leave, and is now waiting here.

The Court: We are going ahead tomorrow.

Mr. Scampini: Yes, I know.

The Court: You were inquiring as to whether we will proceed Monday or Tuesday?

Mr. Scampini: Yes.

The Court: Tuesday.

Mr. Scampini: Thank you, your Honor.

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Bourquin): How old are you, Mr. Faria? A. 47.

Q. Your business, you said, has been farming and farm contractor? A. Yes.

Q. Does that continue to be the business that you carry on? [157] You operate a farm of your own?

A. Yes.

Q. Do you still do farm contracting?

A. I do not do very much of it any more.

Q. When did you last do any farm contracting?

A. About two years—three years ago.

Q. What type of contracting did you do?

A. Using farm machinery and going out and doing work for the various farmers, like hay baling, threshing.

Q. Hay baling and threshing?

A. Tractors and so forth.

Q. When did you organize the Cal Bay Corporation? A. April 17, 1942.

Q. Who is the president? A. Myself.

Q. What are the other officers?

A. John Knox, Russell Gwinn, W. W. Morgans, and Esther L. Faria.

Q. Who is Esther L. Faria? A. My wife.

Q. You took those leases on this property of your aunt, is that correct? A. Yes.

Q. Mary is your aunt? A. Yes.

Q. Is Geraldine a connection of yours?

A. She is my mother.

Q. Geraldine is your mother? A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. As to the other people involved here now, are you connected with the Alvernaz people?

A. Alvernaz—he is no relation of mine, just a neighbor.

Q. Oh, just a neighbor? A. Yes.

Q. Have you other relatives in the picture besides your mother [158] and your aunt?

A. That is it.

Q. That is all?

A. Yes. Eddie Faria and Mae Roche, who is a cousin.

Q. Mae Roche and Eddie Faria are cousins?

A. Yes.

Q. Who have these parcels of 5-acre pieces here?

A. That is right.

Q. Is the John S. Faria, who adjoins parcel 59 here, and who adjoins parcel 57, a connection of yours? A. No.

Q. No connection of yours? A. No.

Q. Did you have a lease on the John S. Faria piece? A. No.

Q. In other words, so we will know now, this piece that is marked No. 56, which I shall outline in red, and lies up against parcel 59 on the southwest, and also against parcel 57, the little piece in there, you obtained no lease on? A. No, sir.

Q. You knew, did you not, that John S. Faria never claimed there was any oil or gas value in the property?

A. I don't know what John Faria thought.

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Bourquin): How old are you, Mr. Faria? A. 47.

Q. Your business, you said, has been farming and farm contractor? A. Yes.

Q. Does that continue to be the business that you carry on? [157] You operate a farm of your own?

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Q. Mary is your aunt? A. Yes.

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A. She is my mother.

Q. Geraldine is your mother? A. Yes.

(Testimony of Joseph Faria, Jr.)

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Q. Oh, just a neighbor? A. Yes.

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Q. That is all?

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Q. Mae Roche and Eddie Faria are cousins?

A. Yes.

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A. That is right.

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Q. No connection of yours? A. No.

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A. I don't know what John Faria thought.

(Testimony of Joseph Faria, Jr.)

Q. You never concerned yourself with that. Although the property lay alongside of the parcel 59 that you feel has such possibilities?

A. I would not say so. I just didn't care for that property, and that is the reason I never bothered with it.

Q. Was there any property lying between the property of John S. Faria and the property of Mary Faria, which is the subject of your lease, the Cal Bay lease?

A. No, that is all, and [159] then the next property would be——

Mr. Scampini: Will you speak a little louder, Mr. Faria? We cannot hear you over here.

The Witness: There isn't any property lying between Mary Faria and John Faria, outside of what Ed Faria and Mae Roche own in there.

Q. (By Mr. Bourquin): In other words, so that we will be clear, parcel 59 is that parcel which I will now outline in this fashion, along here, is that correct? A. Yes.

Q. Marked 59 here, and there is that much of it in the taking that is shown within the limits of the fence shown with this heavy line? A. Yes.

Q. In the parcel 59, or really cut out of it in the southwest corner there are two little pieces, five acres each, 57 and 58, one of which belongs to your cousin, Mrs. Roche, and the other of which belongs to your cousin, Ed Faria? A. Yes.

Q. Now, the property of John Faria is divided

(Testimony of Joseph Faria, Jr.)

from the parcel 59 and 57 only by a fence line, is that true? A. That is right.

Q. You knew that John Faria had settled for his property taken here without any claim of oil and gas?

Mr. Scampini: We object to that as incompetent, irrelevant, and immaterial, and not within the issues of the case, not within the proper scope of the direct examination.

The Court: I will overrule the objection.

Q. (By Mr. Bourquin): You knew that, didn't you, Mr. Faria? [160]

A. I knew that his property there was divided by that fence, separation of the fence.

Q. You knew he settled with the Government and reached an agreement upon the value of his property without any claim of oil or gas interest in it?

A. Well, that I don't know. I don't know what he did, what his transaction was with the Government.

Q. You never heard of that?

A. I know it was taken, but I don't know what kind of a settlement he got, or how it was handled.

Q. You never concerned yourself as to whether John Faria thought there was any oil or gas in that locality?

A. That I don't know. I wasn't interested at all in that piece of property.

Q. Did you ever concern yourself with that question? A. I don't like the property.

(Testimony of Joseph Faria, Jr.)

Mr. Bourquin: I will move that the answer be stricken as not responsive and ask, if I may repeat, the question again.

Q. Did you ever concern yourself with the question of whether John Faria held any gas or oil claims in his land?

A. That I don't know whether he did, or not. I know, myself, I didn't feel that the property was—I didn't think it was good enough to lease. That is why I didn't lease it. I didn't even bother asking him for a lease.

Q. In other words, in your opinion, you felt the property on the one side of the imaginary line dividing Mary Faria and John Faria was one thing and the property on the other side [161] of that line was something else? A. Yes.

Q. Coming back to this company which you say you organized on April 17, 1942, you had taken the leases, you and Bud Hildebrand, the earlier years, had you? A. In 1941, yes.

Q. You and Bud Hildebrand leased in 1941?

A. That is right.

Q. You say that gentleman is deceased, is he?

A. Yes.

Q. Those leases taken in your name and his name were assigned by Bud Hildebrand to you the very same day they were executed from the lessors to you, were they?

A. Not the same day, no.

Q. Do you know that to be the fact, that the

(Testimony of Joseph Faria, Jr.)

assignments are not dated the same day that the leases are dated?

A. No, he assigned this property to me after we had everything leased on that particular area. I don't know just how much time afterwards, but sometime afterwards.

Mr. Bourquin: Perhaps we can stipulate to that, counsel. Are the assignments differently dated?

Mr. Scampini: I do not know. I was looking for the lease. The Mary Faria lease is dated August 11, 1941.

Mr. Bourquin: When was it assigned, please?

Mr. Scampini: The date of the assignment from Hildebrand is February 21, 1942.

Mr. Bourquin: February 21, 1942.

Q. Hildebrand assigned all to you before you incorporated the Cal Bay Corporation, did he?

A. Yes. [162]

Q. You left the impression with me this morning that your next step after incorporation was to have the property explored and obtained geological advice.

A. Yes.

Q. When was it that you employed Mr. Norris to explore the property or to analyze the property?

A. It was in 1942. If I remember right, it was in March, I think, of 1942.

Q. March of 1942? Are you sure? Didn't you obtain your leases and incorporate your company before you ever consulted a geologist, at all?

A. No, sir.

(Testimony of Joseph Faria, Jr.)

Q. Can you give me the date of the geologist's report to you, please, Mr. Faria?

A. Well, the date of the report was April 20th.

Q. April 20th was the date of the report, 1942. In other words, you had no report from the geologist at the time you incorporated, did you?

A. We had it—he had given me his favorable opinion on it, and I don't know whether I got a preliminary report or not.

Q. Will you look and see if you have any report, a written report from Mr. Norris prior to the time that you filed your articles of incorporation on April 17, 1942?

A. I would have to ask Mr. Norris that question.

Q. In other words, you would not know whether you have such a record of anything, or not?

A. I wouldn't.

Mr. Bourquin: That is the fact, isn't it, counsel?

Mr. Seaman: I beg your pardon? [103]

Q. (By Mr. Bourquin): Isn't it a fact that Mr. Norris never made any written report on the property until after Mr. Faria had incorporated his company?

Mr. Seaman: The first written report was April 20, 1942. There were, however, many consultations prior to April 20, 1942.

Q. (By Mr. Bourquin): When did you employ Norris? A. In 1942, in March.

Q. Have you a record of that?

A. No, I have not, only I gave him what I paid him, that is all.

(Testimony of Joseph Faria, Jr.)

Q. Have you a record of when you paid him and what you paid him?

A. Well, I guess I could find it.

Q. Would you look for that overnight, please?

A. I would have to go to Brentwood to look for it.

Q. Perhaps your counsel has it. Have you delivered your records to your counsel in this matter?

Mr. Scampini: Counsel, may I say Mr. Norris is in court. Maybe he has the records.

Mr. Bourquin: I want to examine Mr. Faria, your Honor, and Mr. Norris, in their turn.

The Court: You can introduce the records that counsel asks for.

Q. (By Mr. Bourquin): When did you seek to obtain a permit to sell stock?

A. It was after Norris gave us the report.

Q. What did you do with the Norris report when you received it? [164]

A. I had a copy of it for myself and my board of directors, and the other one was given to the Division of Corporations of Sacramento.

Q. In other words, when you obtained his report you submitted a copy of it to the Corporation Commissioner?

A. Yes.

Q. In Sacramento, upon which to base an application for a permit to issue and sell stock, is that true?

A. Yes.

Q. Do you remember when that was done?

A. No, I don't remember the dates.

(Testimony of Joseph Faria, Jr.)

Q. You do not remember when you made your application to the commission?

A. No, I do not.

Q. Was it May 11, 1942?

A. It probably was. I don't know.

Q. And *Mrs. Norris*' report had been filed at the commission before that? A. Yes.

Q. Then thereafter a permit was granted you, you testified, to issue 62,500 shares of the stock to yourself, is that correct? A. Yes.

Q. 62,500 shares of the stock to yourself?

A. Yes.

Q. Were the 62,500 shares of stock released to you? A. No.

Q. Have they ever been released to you?

A. No.

Q. In other words, in that permit were they issued to be deposited in escrow and released when the Corporation Commission deemed it proper?

A. Yes.

Q. None of that 62,500 shares of stock has ever been released to you? A. No. [165]

Q. It is in escrow. When you gave Mr. Bollman 100 shares of the stock, that was not of your own stock, then, was it?

A. No, I had to put up the money for the stock, of this Cal Bay stock. I put up the \$100 myself for it.

Q. Whom did you put it up with?

A. The Cal Bay Corporation.

Q. Whom did you give it to?

(Testimony of Joseph Faria, Jr.)

A. The Secretary-treasurer.

Q. Who was that? A. Russell Gwinn.

Q. Russell Gwinn? A. Yes.

Q. Who is Russell Gwinn?

A. He is the Secretary-treasurer of the Cal Bay Corporation.

Q. And he lives where, please?

A. Stockton.

Q. What is his business?

A. Insurance man.

Q. Where does the other man you mentioned, John Knox, live, and what is his business, the other officer and director?

A. He is in Stockton and his business is the feed business. He is a feed merchant.

Q. A feed merchant? A. Yes.

Q. The directors consist of you, those two gentlemen, and your wife?

A. And W. W. Morgans.

Q. Where does he live and what does he do?

A. Well, he lived—at that time he lived in Brentwood. He was a merchant.

Q. What type of merchandise did he deal in?

A. Dry goods and groceries, and he also had a farm.

Q. By the way, when this stock was issued, the 62,500 shares, a permit was given the corporation to sell that amount of stock; who sold it?

A. I hired Percy King as an agent in Stockton, and Joe Biallis sold some of it, and there was another agent here in Oakland that sold some of it,

(Testimony of Joseph Farin, Jr.)

and I had an agent's license and sold some, myself.

Q. Who, if anyone, was registered with the Commissioner of Corporations as agent for the sale and distribution of that stock?

A. Percy King, myself, and Joe Biallis.

Q. Was anyone designated as agent with the Corporation Commissioner except yourself?

A. Well, I hired them——

Mr. Scampini: I rise to object on the ground the records of the Corporation Commissioner are the best evidence of the Court please, and further, on the ground it is not within the scope of the direct examination. I have the permits here, if you wish to offer them.

Mr. Bourquin: We are examining the interest of the witness in the matter, your Honor. The witness is an interested party.

The Court: I think the question is proper. If he knows he can say whether he was the agent who was designated or not. I will overrule the objection.

Q. (By Mr. Bourquin): Will you answer the question? Were you not the only person designated as agent to the Corporation Commissioner for the sale of that stock? A. No.

Q. You say no. Did you sell that stock?

A. I sold some of it, yes.

Q. Did you derive commissions from the sale of the stock? A. Yes. [197]

Q. Did you receive nineteen thousand and some odd dollars for the sale of the stock in 1943?

Testimony of Joseph Paria, Jr.

A. I don't know. I don't remember how much I received. I received some money from the sale of the stock.

Q. What commission did you charge?

A. 20 percent.

Q. 20 percent. That was all the Corporation Commissioner allowed, wasn't it?

A. That is right.

Q. You say you do not know whether you received between nineteen and twenty thousand dollars in commissions from the sale of the stock in 1943?

A. I recall just—I don't remember how much I received.

Q. Was it that much, or more?

A. That I don't know.

Q. You have no idea?

A. No, I have not. I would have to get that from the Secretary-treasurer.

Q. The Secretary-treasurer; in other words, you would not have any record of your own?

A. No, I haven't any record of my own—yes, I might find the record of it in my books at home.

Q. Did you receive between nine and ten thousand dollars in commissions for the sale of the stock of the corporation in 1944?

A. Yes—I would say yes, I received that much, yes, sir.

Q. In other words, you did derive in commissions from the sale of this stock sold of the corporation

(Testimony of Joseph Faria, Jr.)

tion approximately \$30,000 in those two years, did you, 1943 and 1944?

A. I wouldn't say to that. I don't know whether I received that much money, or not. [168]

Q. You know what you made in 1944 but you do not know what you made in 1943, is that true?

A. I don't know what I made in any of the years definitely down to the figures. I couldn't give you the exact amount.

Q. Is that approximately right?

A. I wouldn't say. I don't know.

Q. Will you check that?

A. Yes, I will check it.

Q. We want to know. Did you derive any other income from this company engaged in exploration except the commissions from the sale of stock?

A. I owned the drilling equipment, and I received a rental for the use of the equipment.

Q. In other words, you owned the equipment, and you rented it to the Cal Bay Corporation, is that true?

A. Yes, that is right.

Q. Did they pay you approximately \$10,000 to rent it for a period of three months that it was employed in 1943?

A. They paid some of the money, but still they owe me—I lent money, I helped them along, and I didn't get all the rents from them, and I advanced about—I can get the exact amount—I guess I have it here—I advanced \$34,657.77. That includes rents, money, and things I had to buy for the company.

(Testimony of Joseph Faria, Jr.)

Q. Did you receive any rentals for the equipment for the year 1943?

A. I don't remember the amount, but I received some, some rent.

Q. Was it about that?

A. Well, I couldn't say. [169]

A. Well, I charged them \$100 a day.

Q. \$100 a day?

A. Yes, for the rental of the equipment.

Q. And for 90 days or 100 days that would be just about \$10,000, wouldn't it? A. Yes.

Q. The pictures of the rig and other features that were offered and shown to the jury this morning were taken in 1944, is that correct?

A. Yes.

Q. By, you said, Mr. McBride? A. Yes.

Q. Is he a photographer? A. Yes.

Q. He was not a man working on any of the crews engaged in the drilling of the well?

A. No.

Q. Did you have a McBride working on any of the crews in the drilling of the well in 1944?

A. Yes.

Q. Another McBride? A. His brother.

Q. Oh, it was his brother, was it? You said, Mr. Faria, that in the course of the exploration in 1943 at a certain depth a large amount of gas was encountered, is that correct? A. Yes.

Q. About September 24th, you said.

A. This was in October.

Q. Have you the log with you again?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. Will you look and see if any gas was encountered on September 24th and tell us in what terms it was described on the log?

A. On September what?

Q. 24, 1943.

A. On September 24th, "Sample on the shaker screen cut oil, the gas cutting the mud."

Q. May I see your log in that respect, please? On that day, [170] then, September 24, 1943, at a depth of 4268 or 77 feet, the gas was cutting the mud, is that true?

A. That is not the depth there, I don't think.

Q. What is the depth?

A. The depth is from 4236 to 4255.

Q. 4236 to 4255? A. Yes.

Q. You are looking at the second tour. I am looking at the third tour.

A. Oh, yes, this over here (indicating). It would be 4255 to 4268, that is right.

Q. Let me read it and see if it is right.

"4255-4268. Heavy shale, brown. 4268-4275, sand; 4275-4277, brown shale, lots of gas, sample on shaker screen cut oil, gas cutting the mud."

Is that correct? A. Yes.

Q. Are you sufficiently familiar with that log to tell us what operation the men there were engaged in the next five days?

A. Well, Schlumbergers were taken and forma-

Q. And when you were there on the time in question you saw the well surging; what did you see?

A. I saw the mud would at times—it would throw the mud over the top of the rotary table instead of going out through the outlet to the ditch, the pipe below. There is an outlet about three or four feet below that the mud—that runs into the mud ditch.

Q. It wouldn't flow out in the stream intended, but it would blow out to the rotary table?

A. Blow out over the rotary table.

Q. It would blow out over the rotary table?

A. That is right.

Q. Is it correct that the condition there encountered was such that the crews consumed the next five days in circulating to kill the gas?

(Testimony of Joseph Faria, Jr.)

tion tests, and we had to build up our mud weight by the Baroid people, and we to a Schlumberger.

Q. You testified on your direct examination that you were there at that time, were you?

A. Yes.

Q. And that you saw the well was surging and the mud was kicking up over the rotary table?

A. Yes.

Q. What is the rotary table?

A. The rotary table is the table that turns the drill pipe.

Q. And stands at the top of the drill pipe?

A. It stands on [171] the derrick floor.

Q. It stands on the derrick floor?

A. Yes.

(Testimony of Joseph Faria, Jr.)

A. I don't remember how many days they circulated, but they did have to build the mud up and circulate heavier mud.

Q. You filed a summary that you signed and filed with the Division of Oil and Gas on this exploration, didn't you? A. Yes.

Q. Who was it prepared by?

A. By our engineer.

Q. Who? A. Byron Norris.

Q. It was prepared by Mr. Norris?

A. Yes.

Q. But when you signed it you read it?

A. Yes.

A. I don't remember whether I read it, or not.

Q. Are there many things in it that you saw, yourself? [172]

A. Well, I don't remember what I did see in it.

Q. Are there many things in it that you did not see at all?

A. Well, I wouldn't say that, either. There are things that I read in it there lately, but——

Q. Had you finished? A. Yes.

Q. Let us go on from there. From the date, September 24th, until when this gas was seen and the mud was flowing out from the rotary table the exploration was continued, is that correct?

A. Yes, whatever was required then, yes.

Q. In other words, you did not stop there. The operation was not stopped at 4275 feet, but they got the mud under control and kept it going?

A. No, they increased the mud weight so they

(Testimony of Joseph Faria, Jr.)

could take a Schlumberger and an electric log of the well.

Q. Did they take a Schlumberger at that time?

A. After they built the mud up heavy enough to kill the gas flow.

Q. And then you ran various Johnson tests on the matter?

A. That is right.

Q. And you said that on the first one or two of those the packer did not hold, but the third was successful, is that correct?

A. Yes.

Q. What did you mean by successful?

A. Well, that was after we put the casing in the well.

Q. When you said "successful," did you mean that the test showed a commercial gas discovery, or did you mean that it worked mechanically and therefore it succeeded in making the test? [173]

A. It worked mechanically and succeeded in making a test.

Q. What gas did the test show?

A. The report was 100,000 cubic feet per day, and on the next test was 125,000.

Q. And the next test was October 27th, is that true?

A. Well, I would say——

Q. Take a look and see if that was the last test.

Mr. Scampini: That is 1943, Counsel?

Mr. Bourquin: Yes, 1943.

The Witness: What was the date you are referring to?

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Bourquin): What was the date of the last Johnson test on the exploration in 1943?

A. There is one date here on October 5.

Q. Let me put it this way: Look and see on your log when you quit; look and see when you shut down in 1943 and give us the date there.

A. That was October 27, 1943.

Q. What was on October 27, 1943?

A. It shows here that——

Q. Was that the date that you shut down?

A. That, I don't know.

Q. Well, look at it.

A. It says here, "Schlumberger shot from 4270 to 4280, arrested, same packer, set at 4240. Open 7 p.m., closed down 8:40 p.m. Pulled up to 3760 and set packer, open valve."

Q. Aren't you sufficiently familiar with that operation over there to tell us when it was that you shut down the operations of 1943?

A. Yes. We shut down in the latter part of October. Yes, right around the latter part of October. [174]

Q. Can't you tell us the date? Let me see your log, please. In this log book there is a single page devoted to every day, isn't there? A. Yes.

Q. It records the operations that result on each shift, or as the oil people call it, tower, and spelled t-o-u-r?

A. I don't know how they spell it. It is tower.

Q. How do you spell it?

(Testimony of Joseph Faria, Jr.)

Q. Three tours, three shifts. A. Yes.

A. I never had the occasion to spell it, myself.

Q. Will you examine the book and tell me if October 27th is not the last date entered in that book for the operations in 1943.

A. If there isn't any of the pages missing here it would be the last one, but I would refer to the carbon copies of the other; the originals are over there.

Mr. Bourquin: I am not clear with the witness' answer. May it be read?

(The answer was read by the reporter.)

Q. (By Mr. Bourquin): You have referred to the log for the day October 27, 1943, have you not? A. Yes.

Q. Does that log, that day record that a Johnson test was made successfully to estimate that gas of 125,000 cubic feet was—— A. Yes.

Q. It does. Now, will you turn the page in that log book and tell me if there is any operation recorded on the next page.

A. Well, it does not—— [175]

Q. Please answer the question. We ask, your Honor, the question he answered "Yes" or "No," and let him explain if he cares to. Is there any——

A. There is not, it doesn't show any operation. It is signed here by the man.

Q. There is no operation on the next page?

A. It doesn't say anything there.

(Testimony of Joseph Faria, Jr.)

Q. You say it is signed by the name of E. V. Keefe. A. Yes.

Q. Who is he?

A. I don't know. He is a worker, he was employed.

Q. Who is he denominated as on here; the fireman, isn't he? A. Yes.

Q. He signed the log the next day, the next day after that, in the log of this well, and this is the original log?

A. That is the original page.

Q. And the next entry that appears is the date of June 18, 1944; isn't that correct?

A. That is correct for that page, June 18, 1944, is entered.

Q. Signed by J. M. Anderson, Driller?

A. Yes.

Q. Another crew member. So if we were to clarify that, it is a fact, isn't it, that when you had gone down in 1943 to 4268 and encountered heavy gas that blew out over the rotary table and had gone further and encountered, and made your Johnson exploration down to 4375 feet, made the last test, it shows only 125,000 cubic feet on October 27, 1943, the well was shut down, wasn't it?

A. You doubt what?

Q. Wasn't it? It was shut down, wasn't it?

A. The well [176] was shut down after we had all our tests and drilled to the depth of 4394 feet, or 98 feet.

(Testimony of Joseph Faria, Jr.)

Q. When you got to 4275 and you ran a section on the Johnson test at different levels in your casing you got only 125,000 cubic feet on the showing on the Johnson test and you shut down?

A. Yes, I believe we did; yes, I think we shut down at the time. I am not so sure.

Q. By the way, you have been interested in that end of the business; what would you say would be the minimum volume of gas that would have to be found to constitute a commercial volume; in other words, justify exploration and production.

A. I could not answer that.

Q. You could not answer that. Do you recall testifying and giving your deposition in this matter, Mr. Faria? Do you remember?

Mr. Scampini: You can answer it.

The Witness: A. Yes.

Mr. Bourquin: I want to call his attention, Counsel, I will show him a copy of the deposition that I have here. Have you your copy?

Mr. Scampini: I think so.

Mr. Bourquin: I want to draw your attention to pages 66 and 67, where you were interrogated by Mr. Burns, and where Mr. Beardsley was present; will you just look at that? A. Page 66.

Q. Yes, and read from line 9 on page 66 down to line 18 on 67? A. Starting at 66?

Q. If I may interrupt, with your leave, counsel, I will ask this: Didn't you testify when you gave your deposition under oath that the minimum quan-

(Testimony of Joseph Faria, Jr.)

tity that would constitute commercial discovery was one million cubic feet per day?

A. I can tell better here after I read it.

Q. Read it there.

A. "Mr. Maria, for Faria Well No. 1 what would you consider would be gas in commercial quantity; how much gas would there have to be for that well, considering where it is, and the sources of sale and the other factors, how much gas would you think there would have to be to have it in commercial quantity?

A. That is a hard thing for me to answer; I don't know.

Q. Well, you are an oil well operator, from your experience, what would you say would be the minimum for gas in commercial quantity?

A. No response.

Q. In other words, to make money, to pay back the investment in the well, and to make some money out of it?

A. I could just give you my honest opinion.

Q. That is all I am asking for.

A. I would say a million feet.

Q. A day?

A. Cubic feet of gas per day, might do it; I don't know, I don't want to say that is right."

Q. That was your opinion?

A. Yes. [178]

(Testimony of Joseph Faria, Jr.)

Q. You had an opinion then it would be a million cubic feet.

Mr. Bourquin: Does your Honor plan to run until later?

The Court: Well, I thought we would adjourn by 4:30, unless you had some matter.

Mr. Bourquin: Well, I just wanted to know. We want to go into a subject, your Honor, that might be running for sometime.

The Court: Well, do you wish to have the recess?

Mr. Bourquin: I think we might.

The Court: Then we might as well adjourn now. Ladies and gentlemen, we will adjourn until tomorrow morning at ten o'clock. Will you please return at that time, and bear in mind that it is still your duty not to talk about the case among yourselves or permit anyone else to talk to you about it, nor are you to form or express any opinion concerning the matter until the case is finally submitted to you. We will adjourn until tomorrow morning at ten o'clock.

(An adjournment was here taken until tomorrow, Friday, January 24, 1947, at ten a.m.)

Friday, January 24, 1947, 10 o'Clock A.M.

The Court: The jurors are all present. You may proceed. Do you wish to continue with your cross-examination of the witness?

Mr. Bourquin: Yes, your Honor.

JOSEPH FARIA, JR.

recalled as a witness for defendants; previously sworn:

Cross-Examination
(Resumed)

By Mr. Bourquin:

Q. Who was Bud Hildebrand, the man who took the leases with you in the first place?

A. Bud Hildebrand was a man who had been in the drilling experience for some time.

Q. He had been in the drilling business?

A. Yes, he worked for different people.

Q. Had he done any on his own account?

A. That I don't know.

Q. Where did he live?

A. Well, he lived in Bakersfield, I believe, at some of the time.

Q. Baker Street or Bakersfield?

A. Bakersfield.

Q. You said he is now dead? A. Yes.

Q. When and where did he die?

A. He died in Bakersfield.

Q. Was he a resident of Bakersfield, as far as you knew?

A. That I don't know, whether he was or not. He did live there for awhile. [180]

Q. Did you pay him anything for his interest in these leases when he assigned to you?

A. No.

Q. Did you make any arrangement to pay him

(Testimony of Joseph Faria, Jr.)

anything for his assignment of his interest to you?

A. No. He called me, he was sick in a hotel at Newman, and he asked me to come up and see him, he phoned me, and I went to see him. He said, "Joe, I'm very sick and I don't know"——

Q. Well, we are not interested in what he said at that time. If there is anything there your counsel may want to bring it out, they will ask you.

I wanted to know, did he make a gratuitous assignment of his interest in the leases to you?

A. He did.

Q. Did you pay anything to your aunt and the others in the neighborhood there for the leases?

A. No.

Q. You didn't pay any cash consideration?

A. No.

Q. In other words, you merely took the leases with the engagement to give them something in the way of a royalty if a discovery was made, is that true? A. Yes.

Q. To come back to this once more, what we were talking about yesterday, how much stock did you sell, how much of that corporate stock was sold out to the stockholders?

Mr. Scampini: If your Honor please, I rise to object to this line of cross-examination on the ground it is wholly irrelevant to the issues of the case. How many shares the corporation sold, whereby he received a commission is wholly [181] collateral.

Mr. Bourquin: If your Honor desires——

(Testimony of Joseph Faria, Jr.)

The Court: No, I think not. The witness has testified as to how much this is worth. He is, for all practical purposes, one of the chief members of the corporation and his interest may be inquired into. I will overrule the objection.

Q. (By Mr. Bourquin): Can you tell us, Mr. Faria, how much stock was sold out to stockholders?

A. There was about two hundred fifty-two thousand, in that neighborhood.

Q. Two hundred fifty-two thousands shares sold?

A. Yes, more or less; I don't quite recall.

Q. Did the 252,000 include the 62,500 that you received and that is escrowed, as you testified?

A. No. It is—the 62,500 shares is additional to that.

Q. It is additional to the 252,000? A. Yes.

Q. So now there are, plus the stock which is held in escrow—— A. Yes.

Q. The corporate stock was sold to the extent of 252,000 shares? A. Yes.

Q. You said the stock was par value of a dollar?

A. Yes.

Q. And was all the stock sold at par value?

A. Yes.

Q. All sold for a dollar. Now then, again, you said your commission on the sale of stock was 20 per cent? A. Yes, for what I sold.

Q. For what you sold?

A. With the exception I bought a [182] lot of stock for my family and myself, about over nine

(Testimony of Joseph Faria, Jr.)

thousand dollars worth, and that I paid one dollar straight out for.

Q. You didn't take the commission?

A. No. The Board of Directors, they bought themselves for a straight dollar, no commission.

Q. Did you receive for the sales made in 1943 the sum of \$26,482?

A. Well, that I don't know. I would have to go through the books to arrive at that, and I will have to go to Stockton. I will have to go tomorrow or Monday. I couldn't make it last night. The book-keeper's office would be closed. I wouldn't have any time to go there.

Q. You did have, I think you testified yesterday, that the stock sales in 1944, you received \$9,672, that is true?

A. I don't know. I don't remember whether I received that much money or not. I don't remember the amount. I can't recall the amount that I received, but it was all put back right into the company. I was advancing money to them and, in fact, in reality I didn't get anything. It was all given back, all of this money. I helped the company along, since it was to my interest. It was my company and the stockholders and I kept the company—this money all went back into the company.

Q. You testified yesterday, Page 169 of the transcript, that you did not get all of the rent from it? A. That's right. [183]

Q. You were renting your equipment at the rate of \$100 a day?

(Testimony of Joseph Faria, Jr.)

A. Yes, and that was very reasonable for the kind of equipment I had.

Q. Your equipment was in the property from July 8, 1943—

A. It was on the property in 1942. There were many days I never did charge, only if it was used. I was very fair with the company.

Q. You testified yesterday that you advanced the company \$34,657.77; that is correct?

A. Yes.

Q. You said that includes the rent?

A. Yes.

Q. How much of that was rent on the equipment that was not paid out to you?

A. I don't know exactly how much of that was rent; I don't know. I would have to go to the book-keeper or through my books at home and also in Stockton.

Q. Have you any idea?

A. Well, I think there was 137 days of rental that I was not paid for.

Q. 137 days you were not paid for. The balance of the time that the equipment was in operation you were paid, were you?

A. I was paid for some of the time it was in operation.

Q. Were you paid for all the time the equipment was in operation except for 137 days?

A. Well, I don't know, but I think so. I was paid for a good part of the time; that is, I was paid for some of the time and this thing involved money and I had to advance, it is kind of hard

(Testimony of Joseph Faria, Jr.)

for me to state from memory, because I had—the company sometime would be broke [184] and I would have to advance money out of my own pocket to keep the thing going.

Q. Did you take a note for that?

A. No, I didn't take any note for that.

Q. Take any stock for that? A. No.

Q. You mean you just advanced the money?

A. I just advanced the money.

Q. And did not take anything for it?

A. No. When the company had money enough they would pay me back.

Q. When the company had money enough they would pay you back?

A. Yes, I would help them to keep the thing going. I didn't want it to stop. Whenever I had money enough and they were short I would help them.

Q. How much does the company owe to you now?

A. The company owes me at the present time \$34,657.77.

Q. May I see your memorandum on that?

A. Well, this is just—this figure I put here at the bottom, that is not a memorandum, this is just what I have advanced.

Q. Let me look at it a minute; you have been referring to it.

This memorandum which you have referred to to refresh your recollection from is in typing?

A. Yes, it is in typing.

(Testimony of Joseph Faria, Jr.)

Q. Who typed it? A. My wife typed it.

Q. Your wife typed it? A. Yes.

Q. You have the notation that the first permit granted was for 62,500 shares. That is correct?

A. Yes. [185]

Q. That the second permit granted in July, 1943, was for 30,000 shares? A. Yes.

Q. And that the third permit, and the information is prefaced by a date, September, 1943, was for 45,000 shares; that is correct? A. Yes.

Q. With the notation there were or are approximately 632 stockholders; is that correct?

A. Yes.

Q. Then you have on here in typewriting, "Moneys advanced by Joseph Faria, \$34,657.77"?

A. Yes.

Q. That is correct? A. Yes.

Q. That would include the rent of the equipment for the 137 days that you were not paid for, would it? A. Yes.

Q. That would be \$13,700? A. Yes.

Q. What does the other \$20,000 advance make up?

A. It is in the form of money I advanced at different times we needed while in drilling operations and was required all the time we were working there.

Q. Who handled the corporate money?

A. It was handled by Russell Gwinn in Stockton.

Q. Who managed the operations, who did the buying and who passed on vouchers for payment?

(Testimony of Joseph Faria, Jr.)

A. I had the management of this corporation.

Q. You did that? A. Yes.

Q. If we may say this, subject to your checking the matter, you did receive in commissions of 20 per cent \$24,652 plus [186] \$9,678, or approximately \$35,500, and that you did receive rent of the equipment in the sum of approximately \$10,000; that is correct, is it?

A. Well, I don't know. As far as the amount that I received in commissions, I don't know.

Q. Mr. Faria——

Mr. Scampini: Mr. Bourquin, may I interrupt to say that I have a complete audit in my office. I will deliver a copy of the audit to you if you would desire it.

Mr. Bourquin: Well, it might be of interest, but I haven't any curiosity about it. I wanted the matter shown in the record.

Mr. Scampini: I will be glad to furnish you with a copy of his audit if you wish it.

Q. (By Mr. Bourquin): Mr. Faria, when the operations had been shut down October 27, 1943, Mr. Norris made another report, did he?

A. Yes.

Q. You filed that report with the Commissioner of Corporations, did you not? A. Yes.

Q. And based on it made an application for permit to issue and sell new stock; is that correct?

A. Yes.

Q. And the stock that was sold was stock on a succession of permits, that and the earlier ones

(Testimony of Joseph Faria, Jr.)

running up through August, 1944? A. Yes.

Q. I believe Mr. Norris made another written report to you on August 18, 1944? A. Yes.

Q. You filed that with the Corporation Commissioner? A. Yes.

Q. To serve the same purpose? A. Yes.

Q. Again turning to this log that we had here yesterday, we were discussing yesterday the blow-out over the rotary table that you encountered September 24, 1943, and I asked you concerning what was done and how long was spent to control the action of the well.

We desire at this time, your Honor, to put in evidence in this matter the log sheets for the dates from September 24, 1943——

The Witness: Pardon me. That was the——

Mr. Bourquin: Just a minute, Mr. Faria. We have not addressed a question to the witness, your Honor.

I desire to offer in evidence the log sheets for September 24, September 25, September 26, 27, 28 and 29, as Government exhibits in order.

Mr. Scampini: May it please the Court, we will object to the offer of any particular page from the log book. We desire the whole log book to go into evidence there. It is only in for the purpose of identification now, and if any particular portion of it goes into the record, the whole log book should go into the record.

Mr. Bourquin: I don't know of any rule to that effect.

(Testimony of Joseph Faria, Jr.)

The Court: Counsel is entitled to offer what he wants. [188] Of course, you can offer what you want, too.

The Clerk: Do you want each page marked separately in order, Mr. Bourquin?

Mr. Bourquin: Yes. I see that those days are in order in the log book, at least, by the pencilled memorandum.

The Clerk: Plaintiff's Exhibits A, B, C, D, E and F, in order.

(Thereupon the log sheets in question were received in evidence and marked Plaintiff's Exhibits A, B, C, D, E and F.)

Mr. Bourquin: I would like to offer additionally to that the log page for September 30, your Honor, added to that.

The Clerk: Is that the year 1943?

Mr. Bourquin: 1943, the earlier year.

The Clerk: That will be marked Plaintiff's G. Those are September 24 through the 30th for the year 1943, Mr. Bourquin?

Mr. Bourquin: Yes.

(Thereupon the log sheet for September 30, 1943, was received in evidence and marked Plaintiff's Exhibit G.)

Q. (By Mr. Bourquin): Mr. Faria, while we are on that subject, the experience at the well on September 24, 1943, that we are talking about was summarized by you in the summary you said was

(Testimony of Joseph Faria, Jr.)

prepared by Mr. Wents and signed by you and filed with the Division of Oil and Gas dated January 15, 1945, as follows: "Struck heavy gas flow at depth of 4268 feet. Had to circulate until September 29 to kill gas. Put in new mud [189] and 620 sacks of Baroid." That is correct, that is the summary?

A. Yes.

Q. That is the way you understood the matter when you signed the summary? A. Yes.

Q. And the summary which was prepared by Mr. Wents? A. Yes.

Q. You were at the well because you saw that mud kicking out? A. Yes, I was there.

Q. You said—the summary states that new mud was put in. To what extent was new mud put in there?

A. Well, that is the Baroid, the mud to kill the well, to offset the pressure.

Q. Was any new mud put in?

A. Yes. It is all mixed in in the mud pit.

Q. In other words, at that time the mixture was changed and replenished?

A. The weight was added.

Q. Let me ask this, you told us yesterday that you poured in oil in this well in 1944. Can you tell us when that was done?

A. I will have to refer to the log book.

Q. You will need the log book?

A. Yes, for that particular date, if that is what you want.

Q. Yes. Let me give that to you then, please.

(Testimony of Joseph Faria, Jr.)

A. We poured oil into that well twice. Do you want the first time?

Q. Let's get the first time first. Let me ask you, was that November 8, 1944?

A. Well, I will see if that was the [190] first time. I think it is. Yes.

Q. How was that done, by just introducing the oil right into the system, down the drill pipe?

A. No, that was pumped down the drill, through the drill pipe by Alaberton cement wagon, they came on the job and they ran, I don't know just how many barrels, I imagine about seven or eight barrels of oil, that was pumped down in through the drill pipe to the end of the bit and around the drill collar and it was left there for awhile to saturate the formation that was around the bit.

Q. In other words, it was pumped right down the drill pipe? A. Yes.

Q. It was for the purpose of trying to release the stuck pipe? A. Yes.

Q. How much oil was introduced, how much was pumped down?

A. I don't know exactly. I don't know, but there is a record here.

Q. What does the record say?

A. It says "Oil spotted in hole."

Q. "Oil spotted in hole." Does it say how much?

A. It don't state the amount.

Q. Were you there?

(Testimony of Joseph Faria, Jr.)

A. I don't think I was there at that time, but the drilling superintendent was there.

Q. Who was he? A. Mr. Mayes.

Q. Mr. Mayes? A. Yes. [191]

Q. What was your understanding of how much oil was pumped down the drill pipe at that time?

A. On that particular time I don't know, but I do know about the other.

Q. Just a minute. On that particular time you don't know?

A. I don't know the exact amount of oil that was spotted in that well.

Q. Do you recall that on your deposition you said, "I would roughly say maybe 25 barrels"?

A. It could possibly be that much.

Q. A barrel is how many gallons, sixty?

A. I think about forty-two or fifty gallons.

Q. Do you know?

A. I don't know either of that, but I imagine that is what it takes.

Q. When was oil spotted again into the well? Was it on November 22, two days before the well blew out? A. Yes.

Q. Does the record show how much oil was pumped down in the well November 27, 1944?

A. No, it don't. I don't see it here.

Q. Doesn't show? A. I don't see it.

Q. Were you there?

A. Yes, I was there that day.

Q. Was it 25 barrels?

(Testimony of Joseph Faria, Jr.)

A. I don't think it was that much.

Q. Do you know?

A. I don't know exactly how much, only by what Mr. Mayes told me, 8 barrels.

Mr. Bourquin: Well, I will move that what Mr. Mayes told him be stricken. I understand he is going to testify, your [192] Honor. It is hearsay.

The Court: All right.

Mr. Bourquin: Let me put it like this—well, at this time, if the Court please, the Government desires to offer in evidence the log for November 27, 1944, and in addition to that, the log commencing with November 25, including the log page for November 26, the earlier offer of November 27, additionally the log page for November 28 and the log page for November 29, 1944, as exhibits next in order.

The Clerk: I will mark them H, I, J, K, and L, in order, Mr. Bourquin.

Mr. Bourquin: All right.

(The log sheets in question were thereupon received in evidence and marked, respectively, Plaintiff's Exhibits H, I, J, K and L.)

Q. (By Mr. Bourquin): On November 25, 1944, four days before this well blew out, the pipe stuck a certain distance off the bottom: is that correct?

A. The pipe stuck; I remember it sticking. I don't know if that is the exact date.

(Testimony of Joseph Faria, Jr.)

Q. You testified yesterday that some lengths of pipe—how much was that?

A. I would say, 200 feet.

Q. How many lengths?

A. It was two double lengths and a single, I think, if I remember right.

Q. From that time on, was the pipe ever freed until the blowout of November 29, 1944?

A. We didn't free the pipe on [193] the last time that it got stuck.

Q. Are you able to answer the question as to whether or not the pipe was freed after it stuck 200 feet off the bottom and until the blow-out of November 29?

A. No, it was not free.

Q. It was not freed? A. No.

Q. There was no drilling, no cutting?

A. No.

Q. By the bit or drilling done after the pipe was stuck at the point 200 feet off the bottom until the blow-out of November 29, 1944; that is correct?

A. That is right.

Mr. Bourquin: That is correct. [194]

Q. You testified yesterday—I made a note of it—that the drillers never regained circulation of the fluid, the mud, after the blow-out of November 29, 1944, did you?

A. They couldn't—they didn't regain circulation. They lost circulation after the blow.

(Testimony of Joseph Faria, Jr.)

Q. Did you testify yesterday that they never regained circulation after the blow-out of 1944?

A. No, they lost circulation.

Q. Did they ever regain it?

A. Well, they had a little circulation, but they lost it, just after, a little bit, not very much.

Q. Let me ask you, did you testify yesterday they never regained circulation after the blow-out?

A. They lost circulation after the blow.

Q. Please answer the question. Did you testify yesterday that they never regained circulation after the blow-out of November 29, 1944?

A. They did not regain circulation after the blow.

Q. Did you so testify yesterday?

A. I believe I did.

Mr. Bourquin: We desire, your Honor, at this time to offer in evidence also as part of the Government's exhibit, the log sheet of November 30, 1944. I would like to say, without taking the time to read this, as it will come up in a discussion with the experts, perhaps, the purpose of the offer of that now is to show that on November 30, 1944, the second tour, the log recorded, "Circulating." [195]

Mr. Scampini: I did not hear that, counsel.

Mr. Bourquin: I was calling your attention to the fact that the log, on that day, the second tour, whichever shift that is, the day shift—shows, "Was circulating."

(Testimony of Joseph Faria, Jr.)

(The sheet in question was thereupon received in evidence and marked Plaintiff's Exhibit M.)

Q. (By Mr. Bourquin): "Circulating," Mr. Faria, would mean that the mud was being pumped down the drill pipe and moving down the drill pipe, out the bottom of the pipe, and up the hole around the drill pipe, is that what "circulating" means?

A. That is right.

Q. In other words, circulating on November 30th would mean that the hole to the depth of the bit or end of the drill pipe was open on November 30, 1944, wouldn't it?

A. Well, yes.

Q. Would it mean that?

A. It would mean that, certainly. There would have to be an opening there to let it through.

Q. And an opening sufficient to transmit or travel this mud?

A. Yes.

Q. When you went back on the property in 1944 did you commence to sink the hole, or did you do something before you did any more drilling?

A. In July we swabbed, 1944.

Q. What do you mean you swabbed?

A. Swabbing is to set tubing in the casing and take a pull—set aside the wall packer and take a pull and give the formations a fair test and see if there could be any additional gas drawn from it than we had [196] before, and the tests were made in 1943.

(Testimony of Joseph Faria, Jr.)

Q. In other words, when you resumed operations in 1944—July 8th?

A. I believe that is the correct date. I don't know, but I think so.

Q. You did not drill, but you went in and re-tested the old 1943 hole, is that correct?

A. Yes, that is right.

Q. Had the perforations in the 1943 hole been sealed up to that time?

A. No, they were not sealed, no, not cemented off.

Q. So what you were doing was by a swab method making another test looking for the same information sought by the Johnson scientific tests in October, 1943?

A. We did that. We wanted to be fair—before we went any deeper, we wanted to be very fair about it.

Q. How long was it before you abandoned your re-test and started to deepen the hole?

A. I don't know. That would be in the log book. It would show up.

Q. That swabbing test that I have termed a re-test is also known as a production test, isn't it, Mr. Faria?

A. Well, I would say that it is used to give the formation a fair test to see if you can improve it any by drawing on it.

Q. Was it again negative?

A. Well, we didn't take a Johnson.

Mr. Scampini: I object to the question on the

(Testimony of Joseph Faria, Jr.)

ground there is nothing in evidence to the effect that it was negative, [197] your Honor.

The Court: He is asking whether it was negative.

Mr. Scampini: He said was it again negative?

Mr. Bourquin: I am referring to the fact that the Johnson test was negative. I thought that was settled.

Mr. Scampini: I respectfully submit that the Johnson formation test was far from negative, your Honor.

Mr. Bourquin: I am speaking of negative in the sense, did they find anything justifying the operation, or not?

Mr. Scampini: That is a matter of debate and opinion.

Q. (By the Court): Did you learn anything differently from this test than you learned before?

A. We did not apply any Johnson test on this.

Q. (By Mr. Bourquin): In 1944, but you went right down with your tool——

A. Yes.

Q. And brought up anything that was there in your tool?

A. We took a pull on it, yes.

Q. Did you get any volume?

A. Well, there was a gas showing. How large it was I don't know.

Q. Was there any test made for volume?

A. No.

Q. None, at all?

A. I don't think so. I would have to refer to the log book on that. I am not so sure. I can't recall

(Testimony of Joseph Faria, Jr.)

everything that happened, but the log book ought to show what happened.

Q. As a man interested, don't you know whether test gave you [198] any volume, or not?

A. Well, I don't know. It would have to be checked in the log book, and I would have to find out from the men that worked there.

Mr. Scampini: A little louder, Mr. Faria, please.

Mr. Bourquin: I find, your Honor, that this log book is not all in order, and it is a little difficult to get to the particular pages.

Q. When you went in July to resume operations, how many crews did you put on?

A. We just ran one shift.

Q. One shift? A. One 8-hour shift.

Q. One day shift? A. Yes.

Q. And your driller was who?

A. Anderson.

Q. The man whose name appears, J. M. Anderson, as a driller?

A. That is right. He was the head driller.

Q. How long was Mr. Anderson on that crew with you?

A. Oh, I don't know. I would say maybe a month. I am not so sure. It would show there on the log.

Q. Did Anderson remain throughout the operation of 1944? A. No.

Q. Did he remain until the time, August 22nd, that the bit was stuck and the pipe was pulled in two? A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. Did he remain after that during the time that the bit was fished for?

A. Yes, he remained there—yes, we did some fishing for it. I believe the log shows we recovered everything but the bit and drill collar. I think he worked [199] to that.

Q. Did you let the Anderson crew go, or did the Anderson crew go?

A. We let them go because we wanted to put on three shifts and speed up the drilling.

Q. So you did not add two more; you let the Anderson crew go and put three entirely new shifts on?

A. You see, we had to go look——

Q. Did you do that?

A. Yes, we let them go and looked for a crew at Long Beach, a three-shift crew.

Q. Was the well shut down and idle from September 5th. to September 29th?

A. I believe it was.

Q. 1944? A. Yes, I think so.

Q. On September 29th did the new crews resume the fishing for the drill pipe?

A. They tried to get the drill collar out and bit.

Q. It was after that, then, that the window that you described was cut and the whipstock was put down?

A. Yes, that is right.

Q. In the course of those operations in 1944 did you make any scientific tests such as had been made in 1943? Did you make any Johnson tests in 1944?

A. No.

(Testimony of Joseph Faria, Jr.)

Q. Did you make any Schlumberger test in 1944, formation tests? A. No.

Q. Before you abandoned there when the well blew out, were any tests applied or made?

A. No, they only took two cores previous [200] to the blow-out.

Q. And when the blow-out happened and after that were any cores taken? A. No.

Q. Were any tests made? A. No.

Q. For oil or gas? A. No.

Q. None, whatever. Have you the Johnson reports that were made to you on the tests made in 1943? A. Yes.

Mr. Bourquin: May we have those, Counsel?

Mr. Scampini: I have already delivered copies to your assistant.

Mr. Bourquin: I have one, Mr. Scampini, but only one. I had a photostat of that one.

Mr. Scampini: I think I delivered four photostats to your assistant. I had photostats made purposely.

Mr. Bourquin: We will get out of all that trouble if you will introduce the originals.

Mr. Scampini: I will have to find them. That is all.

Mr. Bourquin: All right, when can, please.

Mr. Scampini: Yes.

Q. (By Mr. Bourquin): Mr. Faria, can you identify the Johnson Oil Field Service Corporation's test dated October 27, 1943, and the test chart accompanying that?

(Testimony of Joseph Faria, Jr.)

A. Yes, this is the Johnson test.

Q. Of October 27, 1943?

A. That is right.

Q. The time upon which the well was shut down in 1943? [201]

A. That is right, yes.

Q. And the chart is the chart of the test?

A. Yes.

Mr. Bourquin: We will offer these in evidence, if the Court please, as Government's Exhibit next in order.

The Court: What date was that? October what, did you say?

Mr. Bourquin: October 27, 1943, the day the operation was shut down in 1943.

(The chart in question was thereupon received in evidence and marked Plaintiff's Exhibit N.)

[Plaintiff's Exhibit N appears on Pages 1276 and 1277.]

Mr. Bourquin: I will have to take time to examine this. I will not take the time of the jury and your Honor now.

Q. During the operation in 1944, when you say you had all the troubles, did you have nearly every kind of trouble you could conceive of in an operation in 1944?

A. We had lots of trouble, yes.

Q. Your pipe stuck repeatedly? A. Yes.

Q. And it pulled in two? A. Yes.

Q. You lost your collar and bit? A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. And thereby plugged your hole and you had to make another at the bottom?

A. Yes, we had to cut a window—we had to cut the casing out 18 to 20 feet of the casing, mill it out.

Q. Did you have any trouble with your mud?

A. Yes, we had lots of trouble with mud. There was so much gas it would cut it up. We went to considerable expense for Baroid to build up [202] its weight to counteract the gas pressure.

Q. And you say you had a mud man on the ground? A. Yes.

Q. That was a Baroid salesman? A. Yes.

Q. Did he make reports to you on the mud from time to time?

A. Yes, he was there and checked the muds.

Mr. Bourquin: Have you those reports, Mr. Scampini, the mud reports?

Mr. Scampini: Yes.

Mr. Bourquin: May we have those, too?

Mr. Scampini: I will repeat: I delivered copies of all these reports to you already.

Mr. Bourquin: I do not have any of these reports.

Q. Did you have trouble with your pump?

A. The mud pumps?

Q. Yes.

A. Yes, we had some trouble with them.

Q. What was the capacity of the mud pump you had in there in 1944?

(Testimony of Joseph Faria, Jr.)

A. That I don't know. I don't know the capacity of those mud pumps. They were compounded.

Q. What?

A. They were compounded. I don't know the capacity of them. You would have to get that from the drilling superintendent. Maybe he would be able to give you that information. I don't know.

Q. Did you shut down during repeated intervals in 1944? I mean this: Did you stop circulation repeatedly in the operation in 1944?

A. I don't remember. We would have to check in the log book for those things. That I don't know. It is [203] hard for me to remember.

Q. Did you shut down repeatedly for a shortage of water?

A. Yes, I remember one day the pump—the water pump gave us a little trouble. I had to repair it, and we were short of water for a while.

Q. In 1944? A. Yes.

Q. When?

A. I think it was in November, if I remember right.

Q. You were short of water. When you did not have water you could not make steam and you could not run your pump? A. That is right.

Q. And so you had that experience there?

A. Yes.

Q. Did you bring in water on the property, or were you able to get the water on the property?

A. It didn't take me long to repair it.

Q. No, did you bring water in to the property

(Testimony of Joseph Faria, Jr.)

or did you deal just with water you were able to get off the property there?

A. I got the water off the canal that went by there, the Central Valley Canal.

Q. The Central Valley Canal, that is, the Contra Costa Canal?

A. Yes.

Q. How did you get it from there? By pipe-line?

A. Pipe-line, yes.

Q. You put a pipe-line to the Central Valley Canal?

A. From the Central Valley Canal to the tank up on the well site.

Q. You pumped from the Contra Costa Canal?

A. That is right. [204]

Q. When did you do that?

A. When did I do that?

Q. Yes.

A. From the very beginning, when we began our operations, drilling this well in 1943.

Q. In 1943?

A. Yes, on July 14th we started drilling. We had to be all set with water, plenty of water.

Q. And you laid a pump?

A. We didn't lay a pump, we laid a pipe to the tank.

Q. You did not pump from the creek at the bottom of your hill, there, as Mr. Norris recommended?

A. No, we didn't use that.

Q. By the way, when did Mr. Beardsley retire from this case?

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: We object to that as incompetent, irrelevant, and immaterial. There was no resignation of Mr. Beardsley from this case.

Mr. Bourquin: If there wasn't, it is a matter that could have been disclosed before.

Mr. Scampini: It was not a case of resignation; it is a case of substitution. The substitution is on file and it speaks for itself.

Mr. Bourquin: We will get the date on that, your Honor. I will withdraw the question.

Q. When you resumed operations, commenced these operations, and re-tests in July, 1944, did you know that the Government was considering acquiring this property and the surrounding property?

A. I didn't know that they were—I didn't [205] know anything about it until I was served with the condemnation papers.

Q. When was that, again?

A. That was in July, if I remember right, July 24th or 25th, I think.

Q. 1944? A. 1944.

Q. Prior to that time had you heard that the Government was going to need that property?

A. Well, they were working down below—there were surveyors working down in there. We tried to obtain information from them but they wouldn't give us anything—down on the floor of the valley below us, there.

Q. Below this well? A. Yes.

Q. When did you see the surveyors there?

(Testimony of Joseph Faria, Jr.)

A. Well, I saw them there in June, if I remember right, working around there in June and July.

Q. June? A. Of 1944.

Q. Let me ask you this: Did you have no notice of any kind or character prior to July 25, 1944, that the Government was considering taking this property for its purposes?

A. Only with what I saw there with the surveyors, and I didn't know what it was for. I didn't know anything about it. I didn't know what was going to happen.

Q. Prior to the service of the order of this court on you to surrender possession July 25, 1944, you had never heard of that?

A. No, I didn't know what was going to happen.

Q. You had never consulted with anybody about it?

A. Only I went to the surveyors and wanted to find out what they were doing, and they wouldn't give us any information as far as boundaries, or anything like that.

Q. When you first saw the surveyors down below you, was that before or after you had resumed operations there?

A. That was after we had resumed operations.

Q. After you had resumed operations, and when is it that you say you resumed operations? July 8th?

A. We resumed operations in July, 1944.

Q. So the first notice of any kind or character

(Testimony of Joseph Faria, Jr.)

of the Government's presence or intention in there that you had was you saw some surveyors down there after you resumed operations in July, 1944?

A. That is right.

Q. You never discussed the matter with anyone before that?

A. No—well, I did discuss with my aunts, wondering what was going to happen there, but nobody seemed to know exactly what it was all about.

Q. When did you discuss with your aunts what was going to happen there?

A. I don't recall the date. I don't know when I seen the surveyors there. Whatever date it was. I don't know.

Q. Did you hold a discussion with your aunt before or after you resumed operations in 1944?

A. After I resumed operations.

Q. Not until after you had resumed operations?

A. That is right. [207]

Q. Had you received any notice, written or oral, of any kind prior to your resumption of operations in July, 1944, that the Government was interested in property there?

A. No, I didn't receive any notice.

Q. You had not held any conferences with anybody, or anybody connected with the Government?

A. No, sir.

Q. I believe you testified that after the blow-out of November 29, 1944, you did not further drilling?

A. That is right.

(Testimony of Joseph Faria, Jr.)

Q. You were there after that blow-out, were you?

A. I arrived on the scene just after they had the well under control.

Q. What do you mean they had the well under control?

A. They checked the blow. They stopped the flow of gas, oil, mud and so forth.

Q. Was there any flow surging when you arrived there? A. No.

Q. The well was in that respect quiet when you arrived? A. Yes.

Q. You say you got there about one o'clock in the afternoon?

A. Yes, I imagine about one o'clock.

Q. Was the well closed in, or not?

A. Yes, it was closed in.

Q. You believe it was. Do you know?

A. Well, the drilling superintendent told me he had it closed in.

Q. You did not go to see?

A. No. I was on the derrick floor then, and I was looking at the oil that was all over the derrick floor, on the tubing, and out on the drill pipe.

Q. Was there a blow-out preventer installed on that operation? From the outset?

A. It was there—we had it from the very beginning.

(Testimony of Joseph Faria, Jr.)

Q. Was that closed when you got on the property at one o'clock on November 29th?

A. I would say yes, it was.

Q. Did you see it closed?

A. I didn't look. I just took the word of my superintendent that he had it closed.

Q. Did you remain at the well?

A. Yes, I was there a while.

Q. Did all of the mud kick out of the hole, do you know?

A. Well, that I wouldn't know. I imagine it all kicked out and then maybe more—I don't know, I don't know what kicked out, how much mud kicked out. That is something I don't know because I didn't see it.

Mr. Bourquin: With the exception, your Honor, of matters of records that I think may be covered without the presence of the witness, that is all.

The Court: We will take the morning recess at this time, ladies and gentlemen. Please bear in mind the admonition of the court.

(Recess.) [209]

Mr. Bourquin: Your Honor, I would like to just further put in evidence the log page for December 1 and December 2, 1944, as Government's Exhibits next in order.

The Court: Very well.

(Thereupon the log pages in question were received in evidence and marked Plaintiff's Exhibits O and P, respectively.)

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Bourquin): Say, Mr. Faria, you testified yesterday that you had brought in additional casing on the property there in 1944?

A. I bought additional casing, yes.

Q. Did you put it on the property?

A. No.

Q. Did you take it to the property?

A. No.

Q. What did you do with it?

A. Well, I had it all bought and then we were served with the notice.

Q. What did you do with it?

A. I left it at the place where I bought it, I left it there. It was there and I was ready to move it over there, and we got a notice that we had to leave from the Government.

Q. Where did you buy it?

A. I bought it in Rio Vista.

Q. You bought it in Rio Vista. Did you ever take delivery of it? A. No.

Mr. Bourquin: That is all.

I would like these Johnson tests that Counsel was good enough to give me the reports of to be marked Government's Exhibits for identification, your Honor.

Mr. Scampini: There was some correspondence there and, [210] Counsel, do you want that marked?

Mr. Bourquin: Bound together.

The Court: You'd better identify that.

Mr. Bourquin: I will see if they have any bearing.

(Testimony of Joseph Faria, Jr.)

The Court: You already put one in evidence for October 27, so you'd better identify this in some way by dates.

Mr. Bourquin: Was that the test ticket for that, a test ticket and chart for the test ticket dated November 28, 1943?

Mr. Scampini: Well, there is only on October 5, 20 and 27, as far as I know.

Mr. Bourquin: We will ask, we will put in evidence, your Honor, if we may, the test ticket for October 28, 1943, by the M. O. Johnson Oil Field Service Corporation. The one for October 27 is already in with the chart.

The Court: Very well.

(Thereupon the test ticket for October 28, 1943, was received in evidence and marked Plaintiff's Exhibit Q.)

Plaintiff's Exhibit Q appears on page 1278.]

Mr. Bourquin: There is no chart attached to the test ticket of the 28th. We will offer as well in evidence the charts of the M. O. Johnson Oil Field Service Corporation for dates October 5, 1943, another October 20, 1943, and third, October 21, but by information below it is apparently 1943; three in number without test tickets on any of them.

The Court: Very well.

(Thereupon the charts in question were received in evidence [211] and marked Plaintiff's Exhibits R, S and T, respectively.)

(Testimony of Joseph Faria, Jr.)

[Plaintiff's Exhibits R, S, and T appear on pages 1279-1280-1281.]

Mr. Bourquin: That is all from the witness, your Honor.

Redirect Examination

By Mr. Scampini:

Q. Mr. Faria, during the course of your cross-examination, in answer to the questions of counsel on the other side, you testified, if I remember correctly, that approximately 252,000 shares of one dollar par stock were sold to the public; is that correct? A. Yes.

Q. Other than that, in addition the 62,500 shares which had been escrowed by the Corporation Commissioner under the original permit to be issued to you in exchange for the leases; is that right?

A. Yes.

Q. Were all those two hundred fifty-two odd thousand shares sold for cash? A. Yes.

Q. At one dollar a share? A. Yes.

Q. Did the corporation receive the money, the consideration for the sale of the shares completely or less the commission; did the corporation receive payment for all these shares less commission?

A. Yes, it received all the returns from the payments for the shares. They received all the money, the entire amount of money; they received all of that.

Q. Less the commission?

(Testimony of Joseph Faria, Jr.)

A. Not less the commission. They money was all delivered to it, the entire amount.

Q. The entire amount? A. Yes. [212]

Q. Did Cal Bay Corporation at any time from its incorporation to the present time have any other activities or properties, other than the leasehold estates and assignments in this well?

A. The Cal Bay Corporation didn't have any other property.

Q. Did is engage in any other transactions of any kind or character? A. No.

Q. Did any of the officers or directors draw any salaries from the corporation at any time?

A. No.

Q. Did you draw any salary or compensation at any time? A. No.

Q. Where did all of the money which the Cal Bay Corporation received from the sale of these shares go to? A. It was spent in this well.

Q. In this well. Was that amount of money sufficient to cover the cost of drilling that well?

A. No, sir.

Q. Did you have to advance the balance to the corporation?

A. Yes, I advanced money.

Q. Is that the sum of money which the corporation now owes you? A. Yes.

Q. How many stockholders did you say there are in this company?

A. Approximately six hundred thirty-two.

(Testimony of Joseph Faria, Jr.)

Q. With respect to the property which is owned by John Faria, I think that is his name, John S. Faria, and which is identified on the map which has been marked as Exhibit for Identification No. 12 and which is identified as Parcel 56 in the [213] Complaint on file, can you state in what location that piece of property lies in relation to the structure upon which the well was drilled?

Mr. Bourquin: Just a minute.

The Witness: In the fault——

Mr. Bourquin: I want to object to it on the ground it has not been shown that this witness is qualified to express that. I afraid it is going to open up a line of inquiry of the witness, and I don't think he is qualified.

Mr. Scampini: Counsel on the other side asked the witness some questions that he answered, that he did not like the property, that he had some reason why he did not like the property.

Mr. Bourquin: He said he did not get it, either.

Mr. Scampini: No, I think he said he did not like, he did not go after it. That is what he testified to and he had his reason for not going after that piece of property.

The Court: The question you asked calls for his opinion as an expert. I don't think you would be foreclosed from going into the matter that Counsel opened up, but I don't think the proper foundation is laid to qualify the witness.

Mr. Scampini: I will ask this question—I as-

(Testimony of Joseph Faria, Jr.)

sume that your Honor's ruling is the objection is sustained?

The Court: Yes.

Mr. Scampini: I will ask you this question: Did you [214] have any discussion with your geologist in respect to the property of John S. Faria at the time when you were acquiring these leases; answer "Yes" or "No." A. No.

Q. Did you have any discussion with Bud Hildebrand? A. Yes.

Q. Did Mr. Hildebrand and you decide not to go after that piece of property? A. Yes.

Q. With reference to the fence, is there anything dividing the property of John S. Faria from the property of Mary Faria, Mae E. Dutra Roche and Edward Faria? A. Yes.

Q. Is there anything else that divides that property from the properties of these parties; is there anything else to your knowledge that divides the property of John S. Faria from the property of Mary Faria? A. The fence.

Mr. Bourquin: We submit, your Honor, the map produced by the defendants themselves shows that nothing divides the two properties except the imaginary line which the law draws between the ownerships, and we submit the question is—we object to it.

The Court: You mean, is there any physical mark?

Mr. Scampini: Yes.

Mr. Bourquin: No foundation laid.

(Testimony of Joseph Faria, Jr.)

The Court: I don't see any objection. Counsel says he is inquiring as to whether there are any physical markers.

Mr. Scampini: I will withdraw the question.

Q. Are there any physical indications?

A. Yes.

Q. What are those physical indications dividing the properties?

Mr. Bourquin: That calls for the witness's opinion and conclusion. What does "indications" mean? we object to it.

The Court: There may be markers of some kind on the surface, I don't know. You are not referring now to an oil, alleged oil structure underneath that called for his opinions?

Mr. Scampini: I am referring to a marker which is very definitely on the property and which reflects on the property in respect to it as potential oil or gas land and visible to the naked eye and can be observed by anyone who has had any experience in the oil or gas business.

The Court: I will overrule the objection. He may describe what he saw there.

The Witness: Between the properties there is—nearby the line there, there is the gas seepage and the vegetation in the spring will burn due and caused by this gas coming through the ground.

Mr. Scampini: In respect to that—perhaps I did not make myself clear—are there any physical indications on the surface of the property dividing the property of John S. Faria from Mary Faria's

(Testimony of Joseph Faria, Jr.)

property, which led you not to go after the John S. Faria lease? A. Yes.

Mr. Bourquin: I think we are getting back to the same place. [216]

The Court: I think that calls for his opinion and conclusion. He may state what he saw.

Q. (By Mr. Scampini): Can you state what is apparent on the surface of the property?

A. The vegetation being burned out in the spring.

Q. In answer to Counsel's question on Page 159 of the transcript, you were asked the following question, Line 18:

"You never concerned yourself with that. Although the property lay alongside of the Parcel 59 that you feel has such possibilities?

"A. I would not say so. I just didn't care for that property, and that is the reason I never bothered with it."

What was the there about the property that led you not to go for it?

A. On account of the seepage——

Mr. Bourquin: It would be considered, your Honor, an expression of opinion, and we move the answer be stricken.

The Court: It may go out.

Mr. Bourquin: That is all, your Honor.

Mr. Scampini: No questions, your Honor.

The Court: That is all.

Mr. Scampini: I am going to call—I was plan-

ning to call Mr. Norris next, but I have an expert from the Dow Chemical Company here. May I call him at this time?

The Court: Yes. [217]

ROBERT P. OBRECHT

called as a witness on behalf of the defendants; and having been first duly sworn, testified as follows:

The Clerk: Will you state your name?

A. Robert P. Obrecht.

Direct Examination

By Mr. Scampini:

Q. Mr. Obrecht, what is your profession?

A. I am a chemical engineer with the Dow Chemical Company, Pittsburg, California.

Q. How long have you been with the Dow Chemical Company? A. Ten years.

Q. At what plant of the Dow Chemical Company do you work?

A. The Great Western Division in Pittsburg, California.

Q. What is the activity, or what does the Dow Chemical Company do?

A. Dow Chemical Company is a producer of caustic sodas, chlorine, various insecticides and xanthates.

Q. From what school did you graduate?

A. Colorado School of Mines.

Q. What degree did you receive?

A. Metallurgical engineer.

(Testimony of Robert P. Obrecht.)

Q. After graduation, where did you go, or what did you do?

A. I had two jobs prior to my work with the Dow Chemical Company; one was as lab technician for the American Smelting and Refining Company in Amarillo, Texas; the other was construction inspector, Denver Board of Water Commissioners, and my work with the Dow Chemical Company began in 1937. [218]

Q. With the Dow Chemical Company, what are the scope of your activities or duties?

A. Well, they have been varied during the course of my ten years with the company.

Q. A little louder, please. We cannot hear you.

A. They have been varied during the course of my ten years with the company.

Q. Well, describe them.

A. I have been in the Research Department of the company, Research Development, since 1937, since my start with the company. The first few years concerned qualitative and quantitative analyses and related to the company's work, and since 1939, I have been engaged in chlorination production work for and by the company, in which we chlorinate various hydro-carbons, a business in which the company is actively engaged.

Q. We cannot hear you?

A. Chlorination of organic compounds is a branch of the company's activities with which I have been engaged since 1939.

(Testimony of Robert P. Obrecht.)

Q. In the course of your duties since 1939, have you had occasion to make analyses of the constituents of natural gas? A. Yes.

Q. I refer you to October 23, 1943. Did you or your company have occasion to make an analysis of certain natural gas for the account of Cal Bay Corporation or Joseph Faria? A. Yes. [219]

Q. Will you please state who requested you to make the analysis?

A. Our company, of course, is interested in natural gas exploration activities in that region, being a large consumer of natural gas, and it was probably on my part that the company took interest in this particular operation, and on seeing activity take place out there, and hearing various rumors and reports about it in the town of Antioch and nearby, where I reside, I contacted or, rather, I was contacted as the result of showing some interest in the operation by Mr. Faria. He was interested in having me obtain a sample of gas from this well on a certain date that some operation was to be made, and on which a gas sample could be obtained.

Q. Did you visit the well being drilled by Cal Bay Corporation?

A. Yes, only to obtain the sample.

Q. How many miles from the Dow Chemical Company's plant was the well?

Mr. Bourquin: We object to that as incompetent, irrelevant and immaterial.

The Court: What is this witness being put on

(Testimony of Robert P. Obrecht.)

for? To give the result of a test and a report to someone?

Mr. Scampini: Yes.

The Court: Ask him for it.

Q. (By Mr. Scampini): Did you obtain a sample of the gas being produced from the well?

A. Yes. [220]

Q. On what date did you obtain it?

A. A few days prior to October 23rd. I don't know exactly the date.

Q. How did you obtain the sample of gas?

A. By the conventional methods of collecting the gas and water, preventing the contamination of the sample by air.

Q. From what part of the well did you obtain the gas?

A. I obtained the sample from a pipe line which came from the well head.

Q. How much of a sample did you collect?

A. A five-gallon sample.

Q. Then what did you do with that gas?

A. That sample was taken to the Pittsburg laboratory and analyzed for consistency.

Q. What tests did you subject it to?

A. Naturally knowing or assuming the gas——

The Court: Can't you tell us what is the name of the test? Does it have some name?

A. Yes, the analysis is an Orsat analysis.

Q. (By Mr. Scampin): Is that an orthodox or usual method of analyzing the constituents of natural gas?

A. Yes.

(Testimony of Robert P. Obrecht.)

Q. As a result of the test what did you find the sample to consist of?

A. Referring to the notes kept on the analysis, there was no oxygen, CO_2 , nor——

Q. A little louder, Mr. Obrecht. We can't hear you. Perhaps some of the ladies and gentlemen of the jury can't hear you. [221]

The Witness: Pardon me. There was no oxygen, carbon dioxide, or carbonmonoxide present. Ethane content was .5 volume per cent; methane was $94\frac{1}{2}$ volume per cent; and the balance nitrogen.

Q. Referring to methane, will you please state what that is?

A. Well, that represents an Orsat analysis of

Q. Yes, but what is methane in the element of gas? What is it considered to be, methane?

A. Methane is a combustible hydrocarbon.

Q. Does that mean natural gas, in plain words?

A. Natural gas, widely-known, consists largely of methane. The composition may vary, but more generally all natural gas used industrially and domestically consists of at least 90 per cent methane.

Q. In your experience as a chemical engineer, will you please state what was the quality of the gas analyzed by you in respect to its BTU content?

A. I have not calculated it. The BTU equivalents of methane and ethane are known. From my experience with BTU calculations on natural gas the sample taken.

(Testimony of Robert P. Obrecht.)

analyses I would estimate this to be around a thousand BTU's.

Q. In the general scheme of things, and based upon your experience, is that considered to be a gas of good quality? A. Yes, yes.

Q. Did you submit a report of your findings to Mr. Joseph Faria?

The Court: He just wants to know whether you did.

The Witness: I would like to refer to my notes, please. [222] I have no copy of the report in my file, here.

Q. (By Mr. Scampini): I will show you here a letter, and I will ask you if you will look at it and state whether or not you recognize it.

A. Yes, that is my handwriting.

Q. This is a report that you made to Mr. Joseph Faria, concerning the results of your analysis of this gas, is that right? A. Apparently, yes.

Mr. Scampini: I offer it in evidence as our exhibit next in order, your Honor.

(The report in question was thereupon received in evidence and marked Defendants' Exhibit 20.)

[Defendants' Exhibit 20 appears on page 1247.]

Q. (By Mr. Scampini): Was the quality of the gas sampled by you obtained from the Faria well a gas of good commercial quality?

A. Definitely, yes.

(Testimony of Robert P. Obrecht.)

Mr. Scampini: No further questions.

Cross-Examination

By Mr. Bourquin:

Q. Mr. Obrecht, did you make the examination on your account, or was it an examination that you made on behalf of the Dow Chemical Company?

A. I discussed the possibility of getting a sample of the gas for our own company's use with management——

Mr. Bourquin: Excuse me.

The Court: Can't you answer the question? Is this a personal report of yours, or is it a report of the Dow Chemical Company? "Yes" or "No."

The Witness: The report Mr. Scampini has in writing there is a personal report.

Q. (By Mr. Bourquin): Was it a test made by Dow, or made by Mr. Obrecht personally?

A. The test was made by Mr. R. D. Bernard.

Q. At the Dow plant? A. Yes.

Q. And you, of course, were familiar with it?

A. Yes.

Q. You knew his results were correct?

A. Yes, sir.

Q. And you found that the gas was a gas of good heat value? A. Yes.

Q. In other words, the quality of the gas was all right if they had enough gas there, is that it?

A. Yes.

Q. Does the test give us any indication of the volume of the gas there?

(Testimony of Robert P. Obrecht.)

A. Not as far as I was concerned, no.

Q. In other words, the test was a test of what the gas, irrespective of the volume, entirely, represented in utility; was it a good heat value, or not?

A. In terms of chemical analysis, yes.

Q. I take it that what Mr. Scampini has introduced here as Plaintiff's Exhibit 20, your letter, that was your report, was it? A. Yes.

Q. You did not make any earlier report or other written report, did you? A. No, I did not.

Q. When did you say you took the sample? Your letter says the sample was taken from the well on October 27th. Have [224] you some different record?

A. The notebook from which the entries were made is merely dated 10/23/43. I have no recollection of the record of the date that the sample was obtained. It would have been within a few days of that date.

Q. Of October 23rd? A. Yes.

Q. You said you went and took the sample yourself? A. Yes.

Q. And you said you took it at the wellhead?

A. I took it at a distance some 150 feet from the head of the well out of a pipe which issued from the wellhead.

Q. The well then was under test, was it, when you were there? A. Yes.

Q. The Johnson tests were being made?

A. I am not familiar with the petroleum methods. Some test was being made, yes.

(Testimony of Robert P. Obrecht.)

Q. So you simply tied onto their pipe and got your gas; that is all you wanted, and you went back and tested it? A. Yes, sir.

Mr. Bourquin: I think that is all from the witness.

Mr. Scampini: That is all.

Mr. Bourquin: I will ask him one further question.

Q. Have you a note there of the date that the test was made by the gentleman you mentioned?

A. Yes.

Q. What date did he test that?

A. That is 10/23—October 23, 1943.

Q. There must be some mistake either on your part or your letter. You have no record of it being tested after October 27th? [225]

A. That is the date given in this notebook, which is company property and company records.

Q. May I see it, please?

A. Yes, you may. Here is the entry.

Q. Where is the date?

A. Right here (indicating), 10/23/43, and then it jumps to 11/1. He may not have dated this. It could have been the 27th.

Mr. Bourquin: I see.

Mr. Scampini: That is all, Mr. Obrecht.

The Court: I thought we had better use the time, Mr. Scampini. This case seems to be dragging. It takes too much time to elicit simple information.

Mr. Scampini: I was going to call a short witness.

The Court: Whatever you wish, as long as you can make use of the time.

MARK BEAVER

called as a witness on behalf of the Defendants; sworn.

The Clerk: Will you state your name to the court and jury?

A. Mark Beaver.

Direct Examination

By Mr. Scampini:

Q. Mr. Beaver, what is your usual business or occupation?

A. Well, common laborer is my occupation now. Working in an oil field up to eight years ago, and I had a short time working in—— [226]

Q. How long did you work in oil fields?

A. I commenced in the oil fields when I was eighteen years of age and I worked in the oil fields until eight years ago.

Q. Where did you work in oil fields?

A. From Ramona, Kansas, plum across the State of Oklahoma into Texas.

Q. What did you do while you worked in the oil fields?

A. Dressed tools and cable two, in drilling wells.

The Court: You were the dresser of the tools and worked on cable two in well-drilling operations?

A. Yes, sir.

(Testimony of Mark Beaver.)

Q. (By Mr. Scampini): What else did you do while working in the oil fields besides dressing tools?

A. I followed that eight years and then I went into cable two, what we all call cable two; took them by the wells and drilled a well, and that is what we call screwing——

Q. Just a moment. The reporter has to take all this down. Did you do anything else besides dressing tools in those 30 or 40 years that you worked in the oil fields?

A. I packed a drill for 25 years on table two after I quit dressing tools.

Q. Did you go to work for the Cal Bay Corporation, with Joe Faria, sometime in 1944?

A. Sure did.

Q. When did you go work for them?

A. I couldn't tell you just exactly the date now. 1944.

Q. Approximately?

A. In the summer, somewhere around there, I don't remember.

Q. The summer of 1944?

A. Or in the fall, yes. [227]

Q. Or the fall? A. Yes.

Q. Were you working there on November 29, 1944? A. I think so.

Q. What were you doing?

A. Firing the boilers.

Q. Firing the boilers? A. Yes, sir.

(Testimony of Mark Beaver.)

Q. Did you observe anything on November 29, 1944, at or about eleven o'clock a.m., at the well?

A. I sure did.

Q. What did you observe?

A. Well, I observed that the boilers was working——

Q. Take it easy.

The Court: Will you speak a little louder? It is a little difficult to understand you, Mr. Beaver. The jury have to hear. Will you try to speak a little louder and a little bit slower?

The Witness: I guess so.

The Court: Try that.

The Witness: I sure did know something unusual happened, yes.

Q. (By Mr. Scampini): Tell us what you observed.

A. Well, this well blew out and blew mud, oil, sand and gas 100 feet. The sand went up the rig and the gas went over across to the boilers.

Q. How far from the well were you stationed when this happened?

A. I suppose about 75 yards the boiler was from the rig.

Q. And did you hear any noise or roaring at the well? [228]

A. Noise of what?

Q. Roaring?

A. Yes.

Q. Well, describe what you heard and how it felt.

A. Well, when it blew in, it blew this mud, sand and dirt 100 feet up the rig, and then it would

(Testimony of Mark Beaver.)

choke off and break loose again. You could hear it plum down to the boiler just belling and blowing.

Mr. Bourquin: I didn't hear the last of what he said.

The Court: Read the answer, Mr. Reporter.

(Answer read.)

Q. By Mr. Scampini): How did the earth feel under your feet?

A. It didn't shake hard enough to scare a man.

Q. I can't hear you, Mr. Beaver. You have got your fingers in front of your mouth. Go ahead and describe just exactly the sensations you felt.

A. No, I don't think it shook the ground down to the boiler, I suppose. You could hear it plum down there, jarred the ground, not too much, shaking some.

Q. When you saw this what did you do?

A. Well, when I got my boilers under control I walked over there, up to the rig, and back to my boilers.

Q. And when you got to the rig who did you see there?

A. Well, mud and sand.

The Court: He means who did you see.

Q. (By Mr. Scampini): Who did you see?

A. Oh, who did I [229] see?

Q. Yes.

A. Mr. Freel wasn't there—the superintendent, I believe, Mayes, and the crew.

Q. And the crew? A. Yes.

(Testimony of Mark Beaver.)

Q. And what did you see on the derrick Describe what you saw.

A. On the derrick was mud and sand four to six inches deep.

Q. What else did you see?

A. That is all I seen.

Q. Did you pick up any of the sand?

A. Yes.

Q. What did you do with the sand?

A. I took it in my mouth and tasted it.

Q. Is that a common practice among you workers in the oil fields?

A. I don't know what anybody else practices; I practiced it.

Q. What did you taste when you tasted that sand?

A. Oil, sand—oil and gas in the sand.

Q. Did you rub the sand in your hand?

A. No.

Q. What did you do with the sand that you tasted?

A. Well, I didn't swallow it. I threw it down on the ground.

Mr. Bourquin: What was the answer of the witness?

The Court: He said he didn't swallow it. He threw it away.

Q. (By Mr. Scampini): While you were stationed at the boilers you say you saw gas coming from the well?

(Testimony of Mark Beaver.)

A. The gas blew out and threw mud up on the rig, 100 feet high on the rig.

Q. How could you tell it was gas?

A. Could see it with your eyes. [230]

Mr. Scampini: No further question.

Cross-examination

By Mr. Bourquin:

Q. Mr. Beaver, you were the fireman, were you?

A. Well, I was getting by at it, yes.

Q. Did you have anything to do with the mixing of the mud? A. No, sir.

Q. Or the circulating of it? A. No, sir.

Q. You fired the boilers? A. Yes, sir.

Q. And in that respect your situation was away from, let us say, the roughnecks' operations up there? A. Yes.

Q. You went to work there in 1944, you say?

A. Yes.

Q. Who was your driller first that you worked under, the superintendent?

A. Joe Freel was superintendent. I don't remember what the driller's name was, at all.

Q. Did you work there when J. M. Anderson had his crew on? A. Working daylight?

Q. Yes.

A. Yes, I roughnecked a few days under him.

Q. You worked for a while under J. M. Anderson in July and August?

A. I think a couple of days is about all.

Q. When his crew left you stayed on. is that it?

(Testimony of Mark Beaver.)

A. When his crew left I weren't working. When they started the well again and went to work, I did.

Q. When they started to work on the well after Anderson left, you came back and started to work firing?
A. With a new crew, yes. [231]

Q. You were there the day the well blew out?

A. Yes, sir.

Q. That was on what shift?

A. It was from eight o'clock to four o'clock in the evening.

Q. Eight o'clock to four o'clock?
A. Yes.

Q. What time was it that the thing blew out?

A. Well, as best I remember, a little after eleven o'clock.

Q. Did it continue to blow out for a while?

A. Yes, quite a while.

Q. How long?

A. Well, I would judge to the best of my knowledge possibly an hour, an hour and a half, something like an hour and a half or two hours, as best I could guess at it. I had no timepiece, you know.

Q. You say you observed it from your station. It blew up on the derrick, and then it would choke off and then blow up again, is that right?

A. Yes, that is right.

Q. That is the kind of action you say occurred. It was not a continuous blow, but it would blow up, choke off, and then kick up again?

(Testimony of Mark Beaver.)

A. That is right. When it first blowed in, it blowed quite a while, and then the pressure was shot off by something, and then it came back again and blowed for quite a while steady.

Q. What did you mean when you said on direct examination that you saw it blow up, choke off, and blow up again, and went on like that?

A. What did I see when it did that?

Q. What did you mean when you said that?

A. I meant the pressure [232] would check the strength of the gas, oil, or whatever it was—gas, and then would break loose again and come again. That is what I said.

Q. I would pop up, choke off, and pop up again?

A. Yes, a couple of times.

Q. And that went on for several times?

A. A couple or three times, and then boiled pretty steady.

Q. You say you have been a tool dresser in the oil field for eight years before you went to work over there? A. I sure was.

Q. You are not interested in the property, Mr. Beaver? A. I have a small stock in it.

Q. Oh, you have a stock interest? A. Yes.

Q. Where were you living when you worked there?

A. I was living in Brentwood.

Q. How long had you been living in Brentwood? A. Three years.

(Testimony of Mark Beaver.)

Q. They sold you some stock, did they? How did you acquire your stock?

A. How did I buy it?

Q. How did you get your stock?

A. After this well blew in I bought 100 shares in it.

Q. You acquired your stock after the blow-out?

A. Yes, sir.

Q. Not before? A. No, sir.

Q. Where do you live now?

A. Chowchilla, California.

Q. What are you doing now?

A. Camp boss down there for a ranch. [233]

Mr. Bourquin: That is all.

Redirect-examination

By Mr. Scampini:

Q. Mr. Beaver, did anyone try to sell you any stock? A. What?

Q. Did Joe Faria or anybody try to sell you any stock? Did Mr. Joe Faria or anybody else try to sell you any stock? A. No.

Q. Did you go after the stock, yourself?

A. Yes, sir.

Q. And you went after the stock after you saw the developments at the well that you have described, isn't that right?

A. That is right.

(Testimony of Mark Beaver.)

Q. And how much did you pay for the stock?

A. I paid a dollar a share.

Mr. Scampini: That is all. No further questions.

Mr. Bourquin: No questions.

The Court: We will take the noon recess at this time, ladies and gentlemen, and will resume at two o'clock. Please bear in mind the admonition of the court.

(A recess was thereupon taken until two o'clock p.m.) [234]

Afternoon Session, January 24, 1947, 2:00 p.m.

The Court: The jurors are all present. You may proceed.

Mr. Scampini: May I see the log, Mr. Clerk. At this time, may it please the Court, I offer as Defendants' Exhibit next in order the log which has been marked as Defendants' Exhibit 17 for Identification. I will ask it be admitted in evidence as our exhibit next in order.

Mr. Bourquin: We have no objection.

The Court: Very well.

(The log in question. Defendants' Exhibit 17 for Identification. was thereupon received in evidence.)

Mr. Scampini: May I see the last exhibit, the letter of Mr. Obrecht? In this morning's session

we offered and there was admitted into evidence this—it says “Plaintiff’s Exhibit No. 20”; it should have been Defendants’ Exhibit 20, your Honor. We are defendants in this case instead of plaintiffs.

The Court: That is the report of the witness Obrecht?

Mr. Scampini: Yes. I overlooked reading the report to the Jury. It is very short. I ask permission at this time to read it to the Jury.

The Court: Very well.

Mr. Scampini (Reading): [235]

“R. P. Obrecht
220 Fourth St.
Antioch, Calif.
November 4, 1943

“Mr. Joe Faria
c/o E. M. Woodman
Antioch, Calif.

Dear Mr. Faria:

“An Orsat analysis of a sample of gas taken from your well on October 27, 1943 was found to be:

CH_4	94.5
C_2H_6	0.5
N_2	5.0
$\text{O}_2 \text{ CO}_2 \text{ \& CO}$	Nil

“I am enclosing an extra copy which you may forward to Mr. Byron Norris.

Yours very truly,

R. P. OBRECHT.”

WILLIAM HERBERT MAY

called as a witness on behalf of defendants; and having been first duly sworn, testified as follows:

The Clerk: Will you state your name?

A. William Herbert May.

Direct Examination

Q. (By Mr. Scampini): Mr. May, where do you reside? A. Long Beach, California.

Q. What is your business or occupation?

A. Oil driller.

Q. How long have you been an oil driller ?

A. I have been an oil driller possibly ten years.

Q. What were you before being an oil driller?

A. Driller's helper.

Q. How long were you a driller's helper?

A. Off and on, for twelve years.

Q. Before being a driller's helper, what were you?

A. I worked at what they call roustabout work in the oil fields.

Q. How long were you a roustabout?

A. I imagine a couple of years, two years.

Q. Before being a roustabout, what were you?

A. Well, up to that time I was a schoolboy.

Q. Would you say that since you were a school-boy up to the present time you have been working continuously at the occupations in connection with drilling and working on oil wells, is that right?

A. Yes.

(Testimony of William Herbert May.)

Q. In the course of your activities, you have been a driller in the last ten or twelve years, can you state how many wells you have brought in to successful completion?

A. I imagine, I would say approximately twenty.

Q. In what fields, oil or gas fields in California, have you worked during all these years?

A. In the San Joaquin Valley and Wilmington area and Seal Beach and Huntington [237] Beach.

Q. Have you ever worked for Cal Bay Corporation?

A. Yes.

Q. Do you know Mr. Joseph Faria?

A. Yes.

Q. When did you go to work for Cal Bay Corporation?

A. September 27, 1944.

Q. In what capacity?

A. Drilling Superintendent.

Q. At what well?

A. Faria No. 1

Q. Located on the properties of the Cal Bay Corporation in the Pittsburg hills?

A. Yes.

Q. How many towers were working on the well when you became drilling superintendent?

A. Three.

Q. Will you please state what you first observed in the well when you first undertook the duties of drilling supintendent?

A. There was a bit and a drill collar lodged in the bottom of the casing.

Q. At what depth was the casing, what depth of the casing was the drill collar lodged?

A. I would have to refer to the log, I don't know.

(Testimony of William Herbert May.)

Q. I show you Defendants' Exhibit 17, which is the log of the well.

A. Forty—I can't find that.

The Court: What day are you referring to?

Mr. Scampini: October 7 and 8.

The Court: It may be one of the leaves that were removed.

The Witness: It gives the tenth to the fifteenth. After I went to work there I know the approximate depth of that. [238]

Q. (By Mr. Scampini): The approximate depth? A. 4,100 feet.

Q. Will you please describe for the benefit of us laymen and the Jury what you mean by a collar being stuck?

A. This collar is a weight used on top, between your bit and the drill pipe. It was more or less like a counterbalance; it gives a stabilization. This bit lodged in the drill pipe and evidently in this case when they were digging below this casing, when they came to the bottom casing, it lodged in there, in the pipe, and it wouldn't come out, wouldn't go up or down.

Q. What did you do for the purpose of loosening that drill collar and pipe?

A. Well, we got fishing tools, what they call fishing tools, there is a socket that goes in and reaches over the pipe with the drill collar, and tried to get it loose.

Q. Were you able to get it loose?

A. No.

(Testimony of William Herbert May.)

Q. When you found you couldn't get it loose, what next did you do?

A. We decided on a whipstock, make a new hole.

Q. Were you successful in so doing?

A. Yes.

Q. You started to drill down alongside the old hole?

A. Yes.

Q. As you proceeded to drill, did you take any cores of the formation?

A. Yes.

Q. What, if anything, did you observe in the core?

A. Well, in going through a hard formation there isn't much use to do any coring. When we would hit a soft formation and we took [239] cores there at a soft spot. We took at least three or four cores in the process of drilling while I was there.

Q. Will you please state what you observed in the course of drilling the well after you whipstocked in the nature in the nature of oil or gas reflections?

A. There was gas pressure increasing the deeper we went. There was no oil indication until the well blew in.

Q. When you say the gas pressure increased the deeper you went, how would you know the gas pressure was increasing?

A. We would have to increase the weight of our mud to keep the well from blowing out while we were working.

(Testimony of William Herbert May.)

Q. What weight of mud were you working with when you first started to drill?

A. 83 or 84 pound mud.

Q. As you went deeper, to what weight did you increase it? A. 115 pounds.

Q. In your experience as a driller of wells, can you state whether or not a weight of 115 pound mud is a high or a normal or a low weight of mud?

A. A very high weight of mud.

Q. How much pressure, bottom-hole pressure of gas is 115-pound mud equivalent to?

A. 4,350 feet. I cannot remember that myself, although the Baroid man was there. That can be figured out. At that time he figured the bottom-hole pressure was at about thirty-six hundred.

Q. Is that in your experience a high pressure found at that depth? A. Yes. [240]

Q. What is it indicative of?

A. Well, it is indicative of very high gas pressure.

Mr. Bourquin: What the Baroid man told him I ask be stricken as hearsay. I thought he was testifying as to his observations. He is apparently giving us a recital of something he was told.

The Court: Well, it is hearsay.

Mr. Scampini: It may go out.

The Court: Well, I am not just sure if that is—if that is a part of the daily activities of the witness he might have sufficient knowledge of it to know himself as a result of his own activities.

(Testimony of William Herbert May.)

Mr. Scampini: I will say we will have the Baroid man here.

The Court: I will overrule the objection.

Q. (By Mr. Scampini): As you approached 4,950 feet in depth, can you state whether or not the formation through which you were drilling, whether it was hard or soft formation?

A. 4,950?

Q. Yes. A. Very hard.

Q. As you approached the 4,950-foot formation, can you state what happened of your own observation, in the nature of the tightness of the formation encountered?

A. We encountered that same formation until the depth of around 4,965, I believe.

Q. When you approached 4,965, what did you observe?

A. We observed the drill again making hole much faster than it [241] had before.

Q. Did you observe any increase in the revolutions of the rotary table? A. Yes.

Q. How much of an increase would you say you observed?

A. I would say, around 25 or 30. That is from being in softer digging.

Q. As you penetrated this softer formation, what, if anything, did you observe?

A. We observed higher gas pressure immediately.

Q. How would that manifest itself?

A. The well would start surging.

(Testimony of William Herbert May.)

Q. What did you do to counteract it?

A. We would increase the weight of the mud.

Q. At that place can you state to what weight you increased it?

A. 115 pounds, that was the highest.

Q. How long did that keep up?

A. That kept up until we lost circulation.

Q. When did you lose circulation?

A. We lost circulation after the well blew in, blown in.

Q. On or about November 8, 1944, did your pipe stick? A. Yes.

Q. Do you know how it was stuck?

A. Yes.

Q. What happened?

A. At that particular time we were digging in some heaving shale, caved in on it, caved in on the bit and stuck the pipe. [242]

Q. What did you do to loosen the pipe?

A. Spotted some oil around the bit.

Q. What do you mean by spotting oil?

A. Pump a certain amount of oil down the pipe and let it go up, around and outside of the drill pipe and leave it soak.

Q. What effect has that got?

A. That loosens the formation.

Q. Is that a normal practice in the drilling of wells? A. Yes.

Q. Nothing unusual about it?

A. No. It happens lots of times.

(Testimony of William Herbert May.)

Q. Do you know how many barrels of oil you spotted? A. Yes.

Q. How many?

A. At that particular time?

Q. Yes. A. 25 barrels.

Q. Do you know what gravity oil you poured into the well? A. Yes.

Q. What? A. 14 gravity, fuel oil.

Q. How long did you let the oil remain?

A. Eight hours.

Q. Then what did you do?

A. Pulled the pipe out.

Q. The pipe came loose? A. Yes.

Q. Did you renew drilling operations?

A. Yes.

Q. What happened to that oil that you poured into that well, if you know, what happened to it in this case?

A. It was circulated out of the well. When you start circulation again, [243] yes, the oil that we put in there, there was a certain amount of oil and when it comes out you can see it plainly. You close your ditch and open the gate and blow it down the waste ditch, get rid of it.

Q. It doesn't come back into the mud pit and from the mud pit back into the well? A. No.

Q. It goes down the hill? A. Yes.

Q. How long a period of time does it take to circulate 25 barrels of oil out of the well?

A. In this particular case it wouldn't take over an hour.

(Testimony of William Herbert May.)

Q. You proceeded then to immediately drill. Did your pipe get stuck again? A. Yes.

Q. Approximately when was it, if you remember?

A. The pipe got stuck several times, as far as I was concerned, but sometimes we—it was not bad enough that we had to spot oil.

Q. Did you have to stop it any more?

A. Yes.

Q. When?

A. That was November, I think the 27th.

Q. What did you do?

A. We spotted oil.

Q. How many barrels of crude oil?

A. Eight.

Q. Eight barrels. What gravity oil?

A. Same gravity, 14, fuel oil.

Q. How long did you allow it to remain?

A. Eight hours.

Q. What happened after that?

A. We circulated it out.

Q. Where did it go?

A. Down the waste ditch.

Q. Did it go back into the mud pit at all?

A. No. [244]

Q. How long did you think it would take to circulate eight barrels of crude oil out of the well?

A. That would be only a minute's difference from 25 barrels; it doesn't take much, it wouldn't take over ten minutes off.

(Testimony of William Herbert May.)

Q. Did you then continue drilling?

A. No.

Q. Were you able to loosen the pipe?

A. No.

Q. What did you do for the purpose of loosening the pipe?

A. We did most everything that we could possibly think of in the oil business to loosen pipe.

Q. Just describe what you did?

A. At this time we, well, as an illustration, I can give it this way: You have seen a dog that has something in its mouth and you pull on it and you notice how the dog will pull too. That is the same thing we do with a drill pipe, we pulled or twisted it and shoved down on it, everything you could think of to get it loose.

Q. Were you able to get it loose?

A. No.

Q. During all of this period of time, were you circulating through that well? A. Yes.

Q. Did you try closing the well in?

A. We had closed it in when you spotted oil.

Q. When you did close it in, it indicated pressure—— A. Yes.

Q. What pressure did that indicate?

A. That indicates that as soon as you close the well in your pressure would start up. In other words, the gas is forming in there, and wants to get [245] out.

(Testimony of William Herbert May.)

Q. Do you know about what pressure the indicator was when the well was closed in?

A. Yes.

Q. What pressure? A. 1,600 pounds.

Q. Was that high or low pressure?

A. It is high.

Q. What happened on November 29, do you recall, November 29, 1944, at ar about eleven o'clock a.m.?

A. Yes.

Q. Were you present then? A. Yes.

Q. Were you in charge of the operations at that time?

A. Yes.

Q. Were you there trying to loosen the pipe?

A. Yes.

Q. Please describe exactly what happened at that time?

A. Prior to this eleven o'clock, we had closed the well in and repaired our mud line. The mud line is—the pipe-line runs from your pump to the well and there was a hole came in and we couldn't pump, and so we had to close and went down to Concord, got a welder and he came back and welded the hole in the mud line.

Q. During this period of time the well was closed in, do you know what the pressure indicator showed?

A. Yes.

Q. How many pounds?

A. Same pressure, 1,600 pounds.

Q. Then was happened?

A. It hit the control valve and continued out and the well blowed out.

(Testimony of William Herbert May.)

Q. Please describe what you saw and what you did and what you mean by blowing out?

A. When a well blows out it means [246] that the gas pressure has formed in the bottom of the well and it blows all the fluid out, blow-out.

Q. At what depth were you to the bottom at that time? A. 4,995.

Q. Was that pit of 4,995 feet, or approximately that number of feet, was that filled with mud weighing 115 pounds at that time? A. Yes.

Q. Per cubic foot? A. Yes.

Q. What happened when the well blew out?

A. Well, it blows mud, oil and gas on top of the derrick.

Q. How do you know it was gas?

A. You could see it, smell it.

Q. Has gas coming out of a well under those circumstances and conditions any color?

A. Yes. It is blue, looks like, sometimes you have seen a Bunson Burner, the blue flame there. The gas looks almost that color.

Q. Did the well make any noise? A. Yes.

Q. Please describe what you observed in that respect?

A. The noise was very terrific while it was blowing; I couldn't say exactly how loud it is; probably as loud as the streetcars you hear running along here.

Q. Did you say you observed oil being thrown up into the air also? A. Yes.

Q. How do you know it was oil?

(Testimony of William Herbert May.)

A. We had about five thousand feet of tubing standing on the derrick; the wind was [247] blowing toward the tubing and it would go against the tubing and it would drop around down on the floor, very easily, and whatever obstructions on the derrick it would hit, it would fall down on the derrick floor. You could pick it up in a jar.

Q. In the course of your activities in the oil business you have become familiar with many different types and kinds of crude oil?

A. Yes.

Q. Are you familiar with the gravity of various kinds of petroleum?

A. I can come pretty close to it, yes. The oil that we put in to circulate our drill pipe loose was common, ordinary crude oil, about 14 gravity. This oil, I would say from my experience, was at least 25 gravity oil.

Q. How long did it take to bring the well under control? A. Two hours.

Q. Did the well blow continuously?

A. Yes.

Q. What did you do for the purpose of bringing it under control?

A. We closed our control head. We have a safety measure there, a control head. As soon as the well blowed out we released the pressure and we pumped mud in gradually until we built out mud up high enough that it would—it stopped flowing.

Q. Did you have a gas control head on the well? A. Yes.

(Testimony of William Herbert May.)

Q. When was that installed, if you know?

A. That was there when I went there. This particular control head that [248] we had there was called the Reagen Head. It is a large cylinder made out of heavy iron and inside the cylinder are some rubber, a large piece of rubber in there. It sets loose. The pipe comes down in between there and around the rubber; you pump water and that contacts against the drill pipe up tight and there isn't anything that is supposed to get up around the drill pipe.

Q. Were you able to shut off gas and oil from coming through this case control head?

A. Not completely, no. There was still a little coming out.

Q. In the meantime, were you building up the weight of the mud again? A. Yes.

Q. What next did you do?

A. Well, as soon as we got the well under control, as soon as that I saw Mr. Faria coming up the hill and I asked him if he was selling stock. He said yes. So I bought some stock.

Mr. Bourquin: We submit the conversation is outside of the——

The Court: Yes. Sustained.

Mr. Scampini: It may go out, your Honor, by stipulation.

Q. What did you do next after you had the well under control?

A. We kept trying to loosen the pipe.

(Testimony of William Herbert May.)

Q. Did Mr. Bradford appear on the scene at or about that time?

A. Yes. It was that day or a day later.

Q. Yes.

A. I don't know the exact date. [249]

Q. Are you able to give us an opinion as to the volume of gas that was coming out of that well during the two hours?

A. I can't give the exact amount, although there was a tremendous amount.

Mr. Bourquin: I ask the "tremendous amount" go out, your Honor.

The Court: Yes, that may go out.

Q. (By Mr. Scampini): Have you an opinion as to the volume in cubic feet per day?

A. No, I haven't.

Q. After Mr. Bradford appeared, what did you do for the purpose of trying to loosen the pipe?

A. We did anything Mr. Bradford told us to do. We succeeded in moving the pipe around a little bit; we didn't pull it up or down, but we twisted it some and by using some of Mr. Bradford's methods that are used in the oil fields we moved the pipe and immediately we lost circulation.

Q. Coming to that point, did you have circulation up to this point? A. Yes.

Q. When the pipe was moved, then you lost circulation? A. Yes.

Mr. Bourquin: We object to this as leading and suggestive. I make the objection seriously, because

(Testimony of William Herbert May.)

that is our thought on the matter. I think it should stand out. Let the witness testify to what he did. The question was purely leading.

The Court: Read the question. [250]

(The record was read by the reporter.)

The Court: I will overrule the objection. The question should be: After you moved the pipe, what happened then? It should not indicate what the answer should be.

Mr. Scampini: I will reframe the question. I will withdraw my former question.

Q. As soon as the pipe was moved, what, if anything, happened in respect to circulation?

A. We lost circulation.

Q. Were you able to regain circulation?

A. No. At that time we had Haliburton's cement wagon come there and they put over three thousand pounds pressure into the drill pipe to see if we could regain circulation, but we could not.

Q. Speaking of pressure, do you know how much pressure you applied to the control head for the purpose of closing the control head?

A. At this time we applied 1,000 pounds pressure.

Q. Five thousand? A. One thousand.

Q. Will you please describe to the Jury and to us lawyers exactly how circulation in the course of drilling an oil well is handled?

A. Your drill pipe is hollow and we pump mud through the drill pipe, from a pit through the drill

(Testimony of William Herbert May.)

pipe, goes down through the drill pipe to the pit and goes up around the pit and is run into what we call a mud ditch; at the end of the mud ditch is a shaker. The mud runs over a screen and the particles that come out of the ground go to the waste [251] pit, waste ditch, and the mud drops through the screen, goes back to the mud pit and is pumped back in the well again. That is a continuous procedure.

The Court: You have not told them how the mud comes back.

Q. (By Mr. Scampini): How does it come back, come out of the well?

A. Well, with pressure applied to the inside of the drill pipe, the mud is pumped in and it has to go some place, so it comes back up around the drill pipe.

The Court: On the outside of the drill pipe.

The Witness: A. On the outside of the drill pipe.

Mr. Scampini: The pressure is obtained from the pumping? A. Yes.

Q. The pump pumps the mud into the hollow drill pipe? A. Yes.

Q. Did you notice anything in connection with the sands that were deposited in the ditch?

A. Yes, we took samples continuously, all the time, of all that formation.

Q. What did you observe in respect to the samples taken by you between November 27 and 29?

(Testimony of William Herbert May.)

A. They were very good. They showed oil sands, definitely.

Q. Did you observe anything in connection with any gas reflections from the sand in the ditch?

A. Yes.

Q. Please tell what you observed, or what was done?

A. Your mud became very gassy. Sometimes you run your mud through a long ditch to give it a chance for the gas to [252] escape from the mud; you could take a can of this mud with a shovel, stir it, and a lot of little bubbles would come up and you throw a match there, and it would explode.

Q. Did you have any such incident in this case?

A. Yes. We did it for fun lots of times.

Q. Did you do it after the blow-out?

A. I can't remember whether we did it or not after the blow-out. We were busy trying to get the drill pipe out.

Mr. Scampini: You may take the witness.

Cross-Examination

By Mr. Bourquin:

Q. Mr. May, this log, I take it, was prepared under your supervision? A. Yes, sir.

Q. You were at the well every day; that would be right, would it? A. Yes.

Q. As a matter of fact, can you tell us in whose handwriting the log is over that period?

A. Well, each driller keeps his own shift.

(Testimony of William Herbert May.)

Q. That is, the top man of the crew is the driller? A. Yes, sir.

Q. And he records the experience of his own shift on the log? A. Yes.

Q. Under your supervision? A. Yes.

Q. You saw that log every days, is that right?

A. Yes, sir.

Q. Every shift? A. Yes, sir.

Q. If it is wrong I take it it would be your business to correct it? A. That is right.

Q. If it is inadequate I take it that it would be your business to complete it? A. Yes, sir.

Q. Did you take any tests for oil or gas after the well blew out on November 29th?

A. No, sir, it was impossible to do so.

Q. You did not take any? A. No.

Q. How about this oil that you said came up top, did you take any tests of that, any samples?

A. I did not, no.

Q. You were the head man, weren't you?

A. That is right. It wasn't my business to test any oil. [253]

Q. Did anybody else take any samples to test?

A. That I don't know.

Q. You do not know? A. No, sir.

Q. You saw, you said, gas come up?

A. Yes, sir.

Q. Did you make any test to give us any information as to whether that was an expected commercial deposit, or not? A. No, sir.

Q. You made no tests whatever?

(Testimony of William Herbert May.)

A. I would have no way to make a test there, anyway. That would have to be taken to a laboratory to be tested.

Q. To test for flow?

A. To test for flow? I understood you to say for quality.

Q. No, we are not here trying a question of quality. We are trying a question of commercial or non-commercial volume and flow. Did you take any tests for flow? A. No, sir.

Q. None, whatever?

A. It would be impossible to do that in the condition there.

Q. You have been around oil wells a long time?

A. Yes, sir.

Q. Did you ever see tests made with a Petote tube? A. No, not that way.

Q. Do you know what a Petote tube is?

A. No, sir.

Q. Did you ever hear of it? A. No, sir.

Q. What way do you know of testing for volume of gas?

A. I do not know of any way of testing for volume of gas, myself.

Q. You do not know of any way?

A. No, sir, but I do know oil. [254]

Q. You do oil? A. Yes.

Q. As a matter of fact, you knew, didn't you, that this well had been having some showings of gas throughout the experience of that year before you came on, had it? A. Yes, sir.

(Testimony of William Herbert May.)

Q. And it had the same experiences in 1943 when it was explored; you knew that, didn't you?

A. Yes, sir.

Q. You knew it had been tested in 1943, didn't you?

A. Yes, sir.

Q. You did not feel called upon in 1944 to inaugurate any test at any time?

A. No, sir. We put a cement plug on the well that was there and drilled a new well, the one I am interested in. It didn't have anything to do with the old well, at all.

Q. Let us go back to this day when the well blew out on you. You have testified that you had encountered gas there earlier than November 29th, didn't you?

A. Oh, yes.

Q. On more than one occasion?

A. Yes.

Q. You said that your pressure was heavy pressure, is that correct?

A. That is right.

Q. You were impressed by it, were you?

A. Yes, sir.

Q. Did you inaugurate any tests?

A. No, sir.

Q. Did you suggest any——

A. No, sir.

Q. To your principals?

A. No, sir.

Q. None, whatever?

A. None.

Q. Didn't you feel that it was significant, what you encountered?

A. No, sir.

Q. You did not feel that it was significant?

A. Not a test. [255] Maybe I have you wrong

(Testimony of William Herbert May.)

here. Wait a minute. What do you mean by "significant"?

Q. Did you on any of the occasions that you encountered this gas you testified to think enough of it to stop and see if you had a discovery?

A. The ultimate reason——

Q. Please answer "Yes" or "No" and then if you have an explanation I am not going to deny the witness, but I think it is our right, your Honor. He may answer that "Yes" or "No."

The Witness: Will you ask the question again?

(Question read.)

A. No, I didn't test it. I didn't suggest a test.

Mr. Bourquin: I move that the answer be stricken out because the witness is not responsive. He does not answer the question. He says he did not test it, but that is not the question.

The Court: Read the question again?

(Question re-read by the reporter.)

A. Do you want me to answer that question "Yes" or "No"?

Q. (By Mr. Bourquin): If you please.

A. It can't be answered "Yes" or "No." I don't think.

Mr. Bourquin: We submit that, your Honor.

Mr. Scampini: The witness may explain, your Honor, if he can't answer "Yes" or "No."

The Court: I think maybe the witness does not understand the question. [256]

(Testimony of William Herbert May.)

Q. What the attorney is trying to find out from you, as I gather it, is what you, yourself, thought about it, whether you thought you had enough there to indicate to you as an experienced driller that the time had come to see whether or not you really had captured gas in commercial quantities, and he wants to know what you, personally, thought about it.

Is that right, Mr. Bourquin?

Mr. Bourquin: Yes, your Honor.

Q. (By the Court): I think you could answer that question "Yes" or "No" and then explain your answer, of course.

A. Why, yes. I will say "Yes" to that question. If I thought it was commercially——

Q. (By Mr. Bourquin): The question is, did you think——

The Court: Perhaps I should not have asked the question. I probably have it more confused, but I was trying to clarify it.

Mr. Bourquin: We can go around the other way, I think, your Honor.

Q. Mr. May, if you thought you had uncovered a deposit, you were not going to spend your principal's money just ignoring it and going down and drilling more hole, would you? A. You——

Q. You can answer "Yes" or "No" and we will know how you operate.

A. No, I wouldn't spend his money for something I did not think was right.

(Testimony of William Herbert May.)

Q. If you thought that any of the pressures or gas bubbles or [257] showings you had encountered meant discovery, you would stop the drilling expense right then, wouldn't you?

A. Not with the formation we were drilling in.

Q. What formation were you drilling in?

A. We were drilling in shale most of the time here, you see, and when we came to this and I would stop drilling and we were going to take a test.

Q. Oh, you did stop drilling and you were going to take a test?

A. That is correct. The last time we started pulling the pipe was when we intended to take a core of this formation we were in, but unfortunately we never got out of the hole to take that core.

Q. At what depth was it that you say you found you got out of shale and into sand again?

A. I can give the approximate depth. I can't give the exact depth without the log.

Q. Do you want the log?

A. It was around 4970, 4960, somewhere around there.

Q. 4960. Take a look and check it, will you please?

Q. (By the Court): If you had gas showings in the shale you could not bring in a well, could you? A. Sir?

Q. If you had the gas showings while you were

(Testimony of William Herbert May.)

drilling in shale, you would not have a well, would you? You have to actually get in the sand?

A. I don't know. I have heard of some wells producing gas, that is, they would have gotten to the sand, but in the oil fields we all figure some place is a body of oil that makes this gas. That is what we are hunting for. [258]

Q. You usually get into the sand?

A. Yes. 4965.

Q. (By Mr. Bourquin): 4965. When did you get there? A. Sir?

Q. When was it you got there?

A. At this depth?

Q. Yes, please.

A. That was the 25th of November, 1944.

Q. The 25th of November was the first time you got to 4965? A. Yes, sir.

Q. You testified on your direct examination that at 4950 the going was hard and slow.

A. Yes.

Q. And you went to——

Mr. Scampini: The reporter did not receive that answer because the witness had nodded his head and made no reply to the question, and I desire the witness' reply so the reporter will receive his answer.

Mr. Bourquin: I had not finished, but if he says something, I have no objection to it going into the record.

(Testimony of William Herbert May.)

Q. You testified also that at 4965 you began to make the hole in the *said*, is that correct?

A. Yes.

Q. You testified after that that you saw higher pressures and the well started surging?

A. Yes, sir.

Q. And that on November 8th the pipe stuck in the heaving shales and you spotted oil?

A. On November 8th we spotted oil, yes, sir.

Q. That well had been in sands before, hadn't it?

A. The well had been what?

Q. In sand before.

A. Yes, we went through stratas of sand. [259]

Q. I think you testified it was your practice throughout your operation to take frequent samples of sand from the ditch and test them, is that correct?

A. We took samples every five feet of hole we made, we took a sample.

Q. And you had taken the samples frequently before you got——

A. Yes.

Q. During the course of the operation from September 27th to November 29th?

A. Yes, sir.

Q. The samples of sand?

A. Not necessarily—I didn't say sand. We took samples every five feet.

Q. Did you examine the electric log of the well when you went on it to see what the experience had been before?

A. Yes, sir.

(Testimony of William Herbert May.)

Q. Did you see that the well had passed through successive stratas of sand in 1943?

A. Yes, sir, water sand.

Q. What?

A. That was water sand the electric log showed.

Q. The electric log showed it was sand?

A. Some places that I saw.

Q. What did the electric log indicate? What did you see on it that indicated water sand?

A. What do you mean—what did I see? Do you mean how does the needle work on the chart?

Q. No, you said you saw the electric log had showed they had come through water sand before.

A. That was up above where we set the whipstock, yes.

Q. What do you mean by water sand?

A. There is water sand and oil sand. Water comes out of water sand, and oil comes out [260] of oil sand.

Q. You knew that the experience in 1943 was that they did not get, you mean, sufficient oil or gas, is that correct, so you term it water sand, is that your answer?

A. No, we wouldn't have drilled another hole if we did not think we had some chance of getting a well.

Q. This hole that you were drilling had water in it all the time, didn't it?

A. Had what?

Q. Water in it. You were getting water in this

(Testimony of William Herbert May.)

hole that you were drilling right up to the blow-out, weren't you? A. Getting water?

Q. Water.

A. Do you mean we produced water out of the hole? All formations have water in them.

Q. Weren't you getting water in the hole that you were drilling from the time that you went on in September 27th right down to when it blew out on November 29th?

A. I don't know about the time until it blew out, but I know we encountered some strips of water sand in there, yes.

Q. Didn't you have a high salt content in that mud throughout? A. Not always, no.

Q. Did you see the mud reports that were made periodically?

A. Yes, sir, and the number of grains of sand.

Q. Did you ever see any of them in that experience that did not report a salt content?

A. It reported a salt content, yes.

Q. What you term a high salt content in the mud? A. I wouldn't say; I don't know. [261]

Q. Have you any idea? A. No.

Q. Have you any idea in the range of figures at all? A. No.

Q. So if you saw the mud reports you would not know whether the salt content reported was high or low, is that correct?

A. As a rule——

Q. Did you?

(Testimony of William Herbert May.)

A. We have an engineer that takes care of that.

Q. Would you know if you saw the mud reports whether the salt reported was high or low?

A. Yes.

Q. You would? A. Yes.

Q. What would that indicate to you?

A. That is the number of grains of salt per cubic centimeter of your fluid.

Q. The number of grains of salt?

A. Yes, sir.

Q. Per cubic centimeter of the fluid?

A. Yes.

Q. How many would you say would be a high content?

A. I can't say how many would be high.

Q. You can't say?

A. Or how many would be low.

Q. Have you any idea? A. No, sir.

Q. Would you say from a report reporting so many whether it was high or low? A. No.

Q. You have the log there before you. Will you look at it and tell us whether it shows the amount of oil that you poured down that drill pipe on November 27th?

A. No, it does not. All it says is, "Spotted oil."

Q. It does not show how much?

A. No, sir.

Q. No record of that?

A. Not on this, not on here, no. [262]

(Testimony of William Herbert May.)

Q. Were you there when it was spotted?

A. Yes, sir.

Q. What shift was it spotted on?

A. Spotted on the afternoon shift.

Q. What hours is that shift?

A. From four to twelve.

Q. Where did that oil come from that was spotted?

A. It came out of our fuel oil tank.

Q. Out of the fuel oil tank that you were using to fire the boiler, was it? A. Yes, sir.

Q. Have you any record anywhere of how much oil you put down there that day?

A. The only record I have is what I know I put in there.

Q. Have you any record?

A. No record, only I know the amount we put in.

Q. What did you put it down for?

A. 8 barrels.

Q. What did you put it down for? What was the purpose of it?

A. To loosen the drill pipe.

Q. To loosen the drill pipe? A. Yes, sir.

Q. What did you put it down for on November 8th? A. To loosen the drill pipe.

Q. How much did you put down on November 8th? A. 25 barrels.

Q. How long did you leave the oil there on November 8th?

A. Approximately 8 hours.

(Testimony of William Herbert May.)

Q. What does the log show?

A. Sometimes you leave it longer. The log shows 8 hours. It shows the oil was spotted November 8th on the afternoon shift, and the pipe was pulled loose on the morning tour of the 9th.

Q. Let me look at that.

(Mr. Bourquin examined the log.)

The first entry of circulating after spotting the oil on November 8th is on the first shift of November 10th, isn't it?

A. What did you say?

Q. The first entry of circulating after spotting the oil on November 8th is the entry of November 10th on the morning shift, circulating, isn't it?

A. Yes, that is what it shows here.

Q. That is the first time the log shows circulation was resumed after spotting the oil on November 8th. Now, will you look at the log for the spotting of the oil on November 27th, please?

A. Yes, sir.

Q. And you said that the oil was spotted on the last shift, the night shift?

A. Yes, sir.

Q. Will you follow your log and tell me when after that you find on the log that circulation was resumed?

A. It does not say circulation, but it says here——

Q. Wait a minute. Don't argue, please. We will ask that that be stricken out, your Honor. I want

(Testimony of William Herbert May.)

to know when after that does that log show circulation resumed—circulation?

A. It says circulating on daylight shift November 30th.

Q. November 30th, the day after the well blew out that was, wasn't it?

A. On the morning shift it shows, "Pumping in mud." So if you pump in the mud you have to circulate, but [264] the word "circulating" doesn't show, that you asked me, until that shift.

Q. It shows on the morning shift of November 30th, "Pumping in mud"? A. Yes.

Q. And then the day shift, as distinguished from the graveyard shift, shows circulating?

A. Yes.

Q. Look at the log for November 28th, the day after you spotted that oil. A. Yes, sir.

Q. Does the graveyard shift on November 28th record circulating?

A. No, sir. Do you mean the word "circulating"?

Q. What?

A. You mean the word "circulating"? It doesn't show it, no.

Q. Tell us what it does show. Read the entry for November 28th, graveyard shift.

A. "Moving oil in hole, working pipe."

Q. Moving oil in hole, working pipe. What does that "working pipe" mean?

A. Trying to get it loose, up and down.

Q. It means picking it up at the top and jerking on it? A. That is right.

(Testimony of William Herbert May.)

Q. That is the graveyard shift. What does the day shift on November 28th record?

A. In the log, here?

Q. Yes.

A. It shows, "Moving oil, working stuck pipe."

Q. What does the night shift, November 28th, show?

A. "Loading truck, cleaning out cellar, lights out, working pipe."

Q. What does the graveyard shift on November 29th show? [265]

A. "Clean out the cellar, mix mud, work pipe."

Q. "Mix mud" clearly denotes mixing the mud in the pit, doesn't it? A. Yes, sir.

Q. It was the day shift then of the 29th that the well blew out, didn't it? A. Yes, sir.

Q. Mr. May, during the time that the oil was spotted and left there, circulation was stopped, wasn't it, while it was left there?

A. Yes, we closed the well in when we spotted oil.

Q. Do you know what tendencies take effect in the mud when the circulation is stopped?

A. Yes, it is liable to be cut with gas and lighten the weight of the mud.

Q. It is liable to be cut by gas, and so it will be clear to the jury and the rest of us—I am having a time with this—when you say "cut with gas," you mean that gas enters the mud and rises up through it?

(Testimony of William Herbert May.)

A. Yes, it breaks down the—what should I say—well, gas out with mind is not good mind, unless you can get the gas out of it, and as long as it is moving continuously your mind stays in fair condition, but if it sits still the gas will weaken the mind to such an extent that it is not good mind.

Q. Then the purpose of your weight is not being served when that is taking place, is it?

A. I didn't understand.

Q. While that is taking place the purpose of the weight of your mind is not being served?

A. No.

Q. The weight of the mind is not then holding the gas down, [166] but the gas is rising through the fluid; that is correct, isn't it? A. Yes.

Q. When that gas rises and builds up in that column to the point and to the place where it exceeds the pressure of the remaining column above it—say it was 100 feet—what happens?

A. The well would blow out.

Q. The well would blow out, and out will go is what is above the gas, and the gas will come after it, won't it? A. That is right.

Q. And that will take place in succession as many times as that gas builds up in that fluid, won't it? A. Yes, sir.

Q. You were here this morning when the gentleman with the sense of humor, from Chouchilla, the tool dresser, testified, weren't you?

A. Yes, sir.

(Testimony of William Herbert May.)

Q. You heard him testify that when he looked up from his fireman's place he saw the mud and sand blown up out of the hole?

A. Saw it choke up, then blow up again.

Q. Choke up and then blow up again, didn't you?

A. Yes, sir.

Q. Did you see that?

A. Yes. At the same time we were trying to close the well in. We didn't have too much time to look around to see what was going on. All we wanted to do was stop it.

Q. By the way, you were describing to us what you were using to close the well in. You applied some name to it. What was that name?

A. Reagen. That is the name of the [267] company that puts it out. They call it a Reagen head.

Q. Isn't that a blow-out preventer?

A. Yes, sir.

Q. Sure. Why don't you call it a blow-out preventer when you talk about it?

A. We use control head. Control head and blow-out preventer is the same thing.

Q. Isn't it commonly referred to in the trade as a blow-out preventer?

A. Or control head.

Q. That is the purpose of it, isn't it?

A. Yes, sir.

Q. The purpose of it is when your mud begins to surge, getting out of control, your gas is building up, to bleed it out and prevent a blow-out?

A. Yes, sir.

(Testimony of William Herbert May.)

Q. That was not done here, was it?

A. Yes, sir, it was.

Q. When was it done?

A. We didn't know the well was going to blow out when we opened it.

Q. No use was made of the blow-out preventer until the well had blown out?

A. No. You can't pump, circulate with the blow-out preventer closed.

Q. It was the conclusion reached at the well that the casing had been fouled or collapsed at the window, wasn't it? A. Yes, sir.

Q. What kind of a whipstock did you put in that casing? A. A Baas Ross whipstock.

Q. How did you cut it? Did you cut off square cuts and bevel the edges, or not?

A. You mean of the casing?

Q. Yes, the casing.

A. The casing is cut out with what [268] they call——

Q. What did you do on that occasion?

A. We cut it, milled it off, twenty feet of the whole strip of casing at this depth of 4158. I think it was.

Q. If my pencil were the casing——

A. Yes, sir.

Q. Did you cut it off square at the bottom?

A. We will say you cut it off square at the bottom, yes.

Testimony of William Herbert May.)

Q. When you got to the top of the 40 feet that you were going to use for the window——

A. 20 feet.

Q. The top of the 20 feet that you were going to use for the window, did you cut it off square at the top?

A. Cut it off square at the top first.

Q. Did you leave it that way?

A. No, we milled out the 20 feet. It was all cut up in fine shavings and floated out, that 20 feet of casing.

Q. You milled that out? A. Yes, sir.

Q. What I am getting at, did you leave the bottom of the upper casing cut off square?

A. Yes, sir.

Q. Did you bevel it?

A. No, the whipstock is beveled to take care of that, that you put in there.

Q. Wasn't that upper portion of the casing feather-edged—in other words, cut on a slant down to a feather edge?

A. No, when you cut off a casing with cutting tools it goes straight through it.

Q. Let me see the log on that a moment, will you please? [269]

A. Whether or not it was a cutting edge or a feather edge, the whipstock takes care of it that you put in there, because the whipstock extends above the place it was cut and extends below the place it was cut, and below you set some sleeves in there, and when you let the weight of your whipstock

(Testimony of William Herbert May.)

down, it sets those sleeves so it won't go down any further than it is, and also there is a hanger on the edge of it that hangs over the edge of the casing that is sticking up from the bottom.

May I correct the name of the whipstock?

Q. If you wish.

A. Barrett Overshot is the name. Baas Ross set the whipstock, but Barrett Overshot is the name of the whipstock.

Q. Let me ask you this, without taking the time to explore this voluminous record: Did you leave a feather edge on the upper casing at the bottom of it? In other words, did you cut on a slant through the material so that when you got to the bottom you had less than the thickness of the casing?

A. Oh, no.

Q. You did not do that? A. No.

Q. You testified that you closed the well in on November 23rd. Do you want the log?

A. I didn't testify we closed it on November 23rd.

Q. You did not?

A. I do not think so.

Q. You testified on one occasion you closed it in and then the pressure built up to some hundreds of pounds.

A. Yes, it would build up. [270]

Q. What?

A. It would build up to 1600 pounds when we closed the well in.

Q. When was that?

(Testimony of William Herbert May.)

A. I can't remember off-hand. Several times we closed the well in, but I know that the day we were repairing the mud line, I know—I remember distinctly the pressure went to 1600 pounds in about an hour and a half.

Q. And in about an hour and a half the pressure built up on the gauge from 0 to 1600 pounds, is that it?
A. Yes, sir.

Mr. Bourquin: That is all.

Mr. Scampini: Shall we conclude, or does your Honor wish to take the recess?

The Court: I think we might perhaps take the recess at this time. We will take the afternoon recess, ladies and gentlemen. Please bear in mind the admonition of the court.

(Recess.) [271]

Redirect Examination

By Mr. Scampini:

Q. Mr. May, can you state from your own recollection whether or not between the period of time intervening approximately eight hours after you spotted oil on November 27, 1944, to the morning of November 29, when the well blew out, you had resumed circulation in the well?
A. Oh, yes.

Q. Is there anything in the log book on November 28 that indicates to you that circulation was in progress on that day? Take a look at the page on November 28, please.

A. Some of these drillers get a little careless

(Testimony of William Herbert May.)

in writing everything on the log. It should be written on there.

Mr. Bourquin: I ask that be stricken.

The Court: Yes. The question is, where is there anything in the log.

The Witness: A. Yes. The mud was built up to 113 pounds on the daylight shift November 28. You could not build your mud up to that weight without having circulation.

Q. (By Mr. Scampini): With respect to the matter of tests. In November of 1944, at or about the time when the blow-out occurred, or immediately prior thereto, such as schlumberger or Johnson formation tests, could any such tests have been made while the pipe was stuck? A. No.

Q. Were you able to make a test or make those tests after the blow-out? A. No. [272]

Q. Why not?

A. Because the pipe was stuck.

Q. Isn't it common practice to cut the casing square when you set a whipstock? A. Yes.

Q. And a bevelled or feather edge whipstock is supposed to take care of a casing that has not been bevelled or feather-edged? A. Yes.

Q. Was the whipstock in this case set in the usual and normal manner? A. Yes.

Q. In the ordinary course of drilling wells, is it not true you often encounter water sands?

A. Yes.

Q. What would you do to shut off the water sand?